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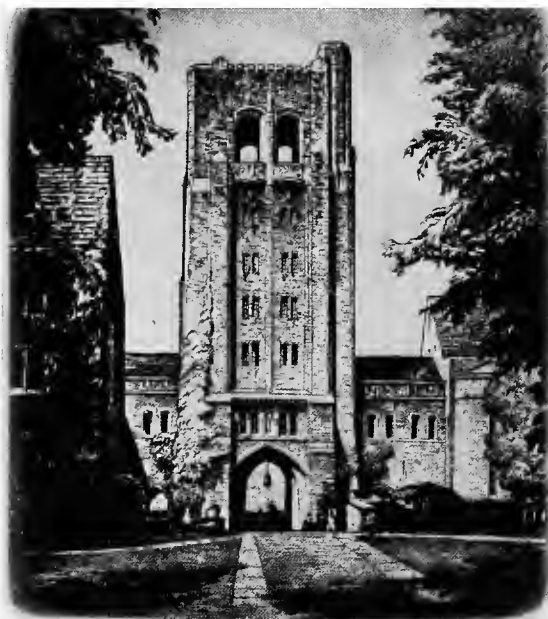
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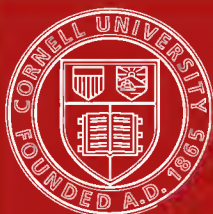


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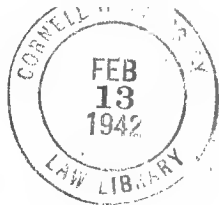


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A DIGEST

OF THE

DECISIONS

IN THE OFFICE OF THE

SECOND COMPTROLLER OF THE TREASURY,

COMPILED

UNDER THE DIRECTION OF THE COMPTROLLER,

BY

JOHN W. BUTTERFIELD,

OF THE SECOND COMPTROLLER'S OFFICE.

THIRD EDITION.

REVISED AND ENLARGED, WITH NOTES AND REFERENCES TO AUTHORITIES.

Claims
Branch

W. H. & O. H. MORRISON,
LAW BOOKSELLERS AND PUBLISHERS,
WASHINGTON, D. C.
1869.

ADVERTISEMENT TO THE SECOND EDITION.

In 1852 the decisions of the Second Comptroller's Office, which had accumulated from its establishment in 1817, were put in a convenient digested form, by George Chipman, esq., under the superintendence of my predecessor, Hon. E. J. Phelps, who resigned in the beginning of 1853. In 1857 I had partially prepared a continuation of the work, but various circumstances prevented its completion, and in the mean time the useful compilation of Judge Chipman had gone entirely out of print.

A great many decisions, affecting the settlement of accounts, had been made since 1852, and the correspondence to which these decisions gave rise with disbursing officers and others connected with the enormous expenditures of the war, showed an absolute necessity of a new edition of the digest, brought up as nearly as possible to the present time. Judge Chipman's digest contains 688 decisions, and this contains upwards of 1,600, of which between 700 and 800 were by the present Comptroller. An addition has therefore been made of more than 900 decisions, many of them on important and interesting questions which, from the aspect of affairs, may be expected to recur. A ready access to such decisions, and a familiarity with them, are desirable on the part of officers who are required to render, state, or revise accounts connected with the War and Navy Departments and the Indian and Pension Bureaus.

SECOND COMPTROLLER'S OFFICE, *March 10, 1865.*

PREFACE TO THE THIRD EDITION.

This edition of the digest of the decisions of the Second Comptroller's Office contains upwards of 600 decisions not heretofore published.

Many new questions springing from the war of the rebellion, and bearing directly upon the settlement of accounts, have been adjudicated; and few disputed cases can arise hereafter upon which an applicable decision may not be found in the present digest.

The references to statutes, opinions of the Attorney General, and decisions of the courts, have been carefully collated and compared with the original.

It will be noticed that quite a number of decisions are retained which recent laws have suspended or rendered obsolete. This is especially true of brevet pay, pay for fatigue duty, pensions to persons in the civil employment of the government, &c.; but in each of these cases the change made by legislation is noted. It was necessary, however, to retain these decisions, as claims to which they apply, arising before the changes made by law, are still presented, and probably will not be entirely exhausted for a long time to come; moreover, some of these laws are obviously temporary in their character, and will, perhaps, be so modified as to make the decisions upon these subjects nearly as essential as ever.

The decisions published in this volume extend from March, 1817, to the present time. Those extending from the former date to March, 1829, were made by Mr. Richard Cutts. Those from March, 1829, to May, 1830, by Mr. Isaac Hill. Those from May, 1830, to August, 1836, by Mr. Isaac Thornton. Those from August, 1836, to July, 1850, by Mr. Albion K. Parris. Those from July, 1850, to October, 1852, by Mr. Hiland Hall. Those from October, 1852, to January, 1853, by Mr. Edward J. Phelps. Those from January, 1853, to October, 1857, by Mr. John M. Brodhead, the present Comptroller. Those from October, 1857, to April, 1863, by J. Madison Cutts. Those since June, 1863, by John M. Brodhead, the present Comptroller.

The present edition contains all the decisions relating to the settlement of accounts and claims adjusted and revised in this office. These comprise all arising in the army, navy, pension, and Indian departments, and, it is believed, furnish the most complete code of rules now extant for the guidance of accounting and disbursing officers, and of persons having claims against the government.

JOHN M. BRODHEAD,
Comptroller.

SECOND COMPTROLLER'S OFFICE, *June 8, 1869.*

NOTE.

The editor of the Digest would feel that he had omitted to perform an agreeable duty if he failed to acknowledge his obligations to Hon. B. B. French, of the Treasury Department, for his valuable services and experience in the work of compilation.

In the examination of the original authorities, the verification of the citations of the numerous statutes of Congress, and the frequent references to the decisions and precedents of settlements in this office his assistance has been invaluable.

SECOND COMPTROLLER'S OFFICE, *June 8, 1869.*

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DIGEST OF DECISIONS.

ACCOUNTS.

SEE *Accounting Officers. Comptroller's Office.*

1. When an account is presented against the United States which purports to have been due for the term of 28 years, the legal presumption arising from the lapse of time is that the account has been paid, and, unless that presumption can be removed, the account is not to be allowed.—*Vol. 10, p. 287.*

2. All accounts accruing during any quarter should, if practicable, be adjusted and paid during the current quarter, or within so short a period after its termination as to be embraced in the accounts for that quarter.—*Vol. 3, p. 235.*

3. Accounts for the expenditures of disbursing officers must bear dates, and all receipts upon vouchers must bear the date when they were written.—*Vol. 9, p. 38.*

4. When vouchers are produced which appear to have been paid and receipted prior to the rendering a former account, an explanation is required why said vouchers were not produced with, and included in, that account.—*Vol. 13, p. 179. PENSION AGENT, 1698.*

5. Accounts for postage of letters on public service must be accompanied by a certificate from the officer sending or receiving them, setting forth that the postages charged are due exclusively for letters on public business committed to their charge.—*Vol. 3, p. 235.*

6. Whenever an account of a disbursing officer is examined by a clerk in the office of the Second Comptroller, and it shall appear that such officer is no longer employed to disburse the public money, and that a balance remains in his hands unaccounted for, it is the duty of the clerk, by whom such account is examined, to hand to the Comptroller, on a separate paper, the name of such officer, the balance due the United States, if any, according to his own statement, the balance due the United States, according to official statement, and such other remarks as the appearance of the account may call for.—*Vol. 7, p. 191. DISBURSING OFFICERS, 730.*

7. By a regulation of the War Department, made in conformity with law, officers are prohibited from passing away or transferring their accounts for any amount not actually due at the time.—*Vol. 11, p. 407.*

8. An officer cannot be credited on an account that is not supported by satisfactory vouchers.—*Vol. 19, pp. 62, 63.*

9. See letter to the Secretary of the Treasury in Captain John Philbrick's case, as to the method of stating his accounts, July 15, 1856.—*Vol. 19, pp. 459-462.*

10. A purser (now paymaster) is allowed 60 days after his detachment and the paying off of the crew for the settlement of his accounts. The Secretary of the Navy must decide whether a person was on duty or not.—*Vol. 20, pp. 103, 104.*

NOTE.—In force until October 28, 1862, when, by the decision of the Secretary of the Navy, 25 days are allowed to paymasters; to assistants and acting assistants, 15 days, and one additional day for each month of the cruise. Since February 12, 1864, (decision of Secretary of Navy of that date,) for vessels of the first rate 60 days are allowed; of the second, 50 days; of the third, 40 days; of all other rates, 30 days.

11. All accounts whatever against the United States shall be settled and adjusted in the Treasury Department, it being the duty of the Comptroller to receive and make final decisions on them. The powers and duties of the Comptroller do not depend at all upon his rank, but are conferred upon him by law; nor is he precluded by the rank of another, however exalted, from critically examining and passing upon his official acts in relation to public expenditures and accounts.—*Vol. 17, pp. 6-21; vol. 25, p. 212.*

12. Where Auditor disallows vouchers or items, the cause should be distinctly set forth.—*Vol. 23, pp. 1, 2.*

13. The settlement of accounts arising under a contract must be based on the conditions of the contract, and the sanction by the Commissioner (Indian Affairs) of an account cannot be considered final and conclusive. The mere approval of the Commissioner upon an account cannot conclude the matter, and prevent the accounting officers from correcting errors in calculation or principle.—*Vol. 18, pp. 189, 190. ERRORS, 799.*

14. The circulars of August 4, 1862, and April 10, 1863, are superseded by that of June 20, 1863, which is as follows:

1. That under the act of July 17, 1862, (12 Stat., 593,) the accounts and vouchers required are such only as relate to the receipt and disbursement of public money, and not property or other returns, which will be rendered, as heretofore, according to the regulations.

2. All officers, agents, or other persons, receiving public money, except from the treasury, or a disbursing officer, are required to deposit the same in the treasury, or some depository of the government, and include the receipt and payment therefor in their money accounts.

3. Disbursing officers or agents ceasing to be such, will immediately render their accounts, with vouchers, to the proper accounting officers.

4. The Secretary of the Treasury directs that the Second and Third Auditors transmit to the proper bureau such accounts and

vouchers as require administrative action, requiring their prompt return, with such information and suggestions as may be pertinent to their settlement at the treasury.

5. The Second, Third, and Fourth Auditors will report to the Second Comptroller monthly the name of each officer or agent who has omitted to render his accounts according to the act of 1862.

6. The report will state the name of the officer or agent, the time the account should have been rendered, and under instructions he transmitted to the Secretary of the Treasury, and duplicate at the same time to head of department to which the offending officer belongs.—*Vol. 25, pp. 190-192.*

15. The circular from this office of June 30, 1863, was modified (May 4, 1867,) to conform to the joint resolution of March 2, 1867, (14 Stat., 571,) which repeals so much of the act of July 17, 1862, (12 Stat., 593,) as required the accounts of disbursing officers to be sent to the Auditors of the Treasury, and provides that they shall be sent to the bureau to which they pertain.—*Vol. 30, p. 366.*

16. Accounts for duty pay, under the regulations of the Navy Department, allowing persons to be detached from navy yards as inspectors of provisions, &c., should be accompanied by a certificate from the chief of the Bureau of Provisions and Clothing, that the person was so necessarily employed for the time charged, including time required to settle his account with the bureau.—*Vol. 21, pp. 277, 278.*

17. When the administrative action of the department in which the account originated is required, it must first be had before settlement by the accounting officers.—*Vol. 23, pp. 569, 570, 576.*

18. In settlement of the account of B it was claimed that a receipt given to C was intended for B, and should be allowed and credited to him. Held that the alteration and credit could not be made, unless the facts entitling the claimant to have the voucher so altered should be clearly ascertained, and made to appear of record.—*Vol. 21, pp. 139, 140, 532, 533.*

19. In settling the accounts arising from the Rogue River Indian war, stoppages were made on the rolls for use of horses, clothing, &c, furnished by third parties. Held, that the names of those who so furnished, or used, appearing on the rolls, or otherwise satisfactorily, payment may be made to the amount thus stopped, and the receipt of the parties will be sufficient vouchers at the Treasury.—*Vol. 18, p. 108.*

20. If an officer is entitled to credit beyond the amount with which he is chargeable, under any appropriation, the statement of the account and the report will so declare the fact. In that case let the report embody a request to the Secretary of the proper department to issue his requisition in favor of the officer for the amount, to be carried to his credit by a counter or refunding requisition under some appropriation on account of which he is debtor. The report, when returned to the Auditor on confirmation of settlement, should be sent to the

Secretary, accompanied by the pay and counter requisition; and it should accompany said requisitions until returned for registry, when the report should be detached and filed, and the requisitions sent to the Secretary of the Treasury. This should be done in each case as soon as a settlement is returned with Comptroller's approval.—Act March 3, 1797, (1 Stat., 512.)—*Vol. 21, pp. 204, 205, 222.*

21. The statement of an account should show on its face the nature of each item of debit or credit; the classification of items, and the separate amount of each; the dates and amounts of all invoices and transfers, &c. Nothing should be entered on the "Abstract" except actual disbursements or issues on pay-rolls, considered as money, so that it shall show a money transaction. The slop and small-store account should be as full in details as the statement, each invoice being entered separately, the dates of transfers properly noted, and the nature of items carried from it to the statement being made to appear thereon. The reconciliation or statement of differences should show each item separately on which there is a discrepancy between the officers and the official statement, together with the cause thereof. The dates of requisitions charged in an account should be given.—*Vol. 20, pp. 5-7.*

22. Even when an officer's account has been closed, a settled account being only *prima facie* evidence of its correctness, "it may be impeached by proof of unfairness, or mistake in law or in fact." (See *Perkins vs. Hart*, 11 Wheaton, 256.) And the true state of the account between the parties being thus shown, the balance resulting may be recovered. (Major Heintzelman's case.)—*Vol. 20, pp. 268-270. JUDGMENT OF COURT, 1005; DISBURSING OFFICERS, I, 742.*

23. Where the pay accounts of officers have passed into other hands, and payment not promptly made by the pay department, such fact is regarded, *prima facie*, as evidence of defect in the account. To guard against double payment in such a case, the usual certificate of non-indebtedness from the Second and Third Auditors should be produced, and the rolls and books of the Paymaster General should show that no payment had been made for the period covered by the account.—*Vol. 28, pp. 351, 352.*

24. The settled account of an officer or soldier cannot be reopened for the purpose of making an additional allowance for merely constructive service or constructive travel. Such payments have always been rightfully discountenanced, even when the letter of a statute or regulation might give them a color of legality.—*Vol. 29, p. 85*

25. When an account for transportation prepared, &c., was presented by the agent of the Pennsylvania Railroad Company, and in that form recommended for allowance by the Quartermaster General, approved by the War Department, and paid by a quartermaster. Held that the account should be passed and charged to the transportation fund.—*Vol. 25, pp. 171, 172*

26. In the settlement of quartermasters' accounts in which entries for expenditures for, and receipts from, refugees, freedmen, and aban-

doned lands appear, such items of account may be settled as properly accruing in the discharge of the officer's duty; but when the receipts are in excess of the aggregate expenditures, such excess should be covered into the treasury under the head of miscellaneous receipts—*Vol. 28, pp. 582, 583.*

27. An officer who issues a certified account is regarded as an interested party, and if payment be based upon the copy of an order, the certificate to the correctness of the copy should be by some other officer or statement that none other is present at the post.—*Vol. 28, p. 470.*

28. Accounts against the government will not be admitted upon the certificate of an official certifying signatures which purport to have been made, transferring the interest of the original claimant to the certifying officer. The acknowledgment of receipt and transfer should be made before an officer not himself the assignee.—*Vol. 28, p. 691.*

29. Major Mordecai presented the account for expenses incurred by the military commission to Europe, 1855-'56, for transportation, &c., and for which it was impossible to take receipts. Held that the accounting officers had no authority to allow the accounts. First. Because under the act of August 26, 1842, (5 Stat., 533, sec. 25,) the accounting officers are prohibited from paying any account or charge whatever growing out of, or in any way connected with, any commission or inquiry, until an appropriation for the payment be made. Second. Because no appropriation had been made.—*Vol. 25, pp. 183-187.*

30. It is a legal principle that every one should take advantage of his right at the proper time; and it is a long standing rule of the Treasury that items of charge should be included in the account for the quarter in which they accrued, and, if subsequently presented, the fullest explanation and proof are required.—*Vol. 18, pp. 296-298.*

31. If an account be predicated on a contract, reference should be made to the contract in the body of the account, and the original should be transmitted with the first account arising under it.—*Vol. 3, p. 235. BONDS, 146; INDIAN AGENT, 991; PAYMASTER, I, 1510, 1511, 1512.*

ACCOUNTING OFFICERS.

SEE Accounts. Comptroller's Office.

32. The accounting officers of the treasury have no direction or control over the mode or manner in which disbursing officers transmit their accounts for settlement. Acts of January 21, 1823, (3 Stat., 723,) and July 17, 1862, (12 Stat., 593.) Their duty in such cases consists in reporting delinquencies of such officers to the Secretary of the Treasury and the head of the department to which they pertain.—*Vol. 25, pp. 752, 753.*

33. An accounting officer has no right to reopen a claim settled and adjudicated by his predecessor, except on the presentation of new and material facts.—*Vol. 3, p. 85; vol. 17, pp. 352, 353, 518; vol. 18, p. 320; vol. 19, p. 62; vol. 20, pp. 445, 446; vol. 21, p. 274.*

34. The suspended vouchers of B, a disbursing officer, by him admitted, and government credited therewith, were again presented after the lapse of 15 years, on the ground that, according to the then regulations, the payments were justly made by him. Held that except new and material testimony be offered, showing a different state of facts from those presented in the official adjustment already made, the case cannot be re-opened.—*Vol. 23, pp. 56, 57.*

35. The accounting officers have no authority to allow a claim which has been fully examined and rejected by their predecessors, unless upon the production of new evidence, which removes the objection formerly existing.—*Vol. 15, p. 161.*

NOTE.—See Opinions of Attorneys General, vol. 2, pp. 8, 463, vol. 3, p. 46, and Supreme Court in United States *vs.* Bank of Metropolis, (15 Peters, pp. 400, 401,) against opening accounts settled by predecessors, &c.; see also Attorney General Black's opinion in Heintzelman's case, Nov. 24, 1860; report of Court of Claims No. 15, case of W. W. Chase, 1856.

36. In regard to settlements under acts for relief of individuals, the accounting officers comply with the directions of the Secretary of the Treasury under date of August 21, 1854, in which he says: "You will consider it a standing order of this department that no settlement is to be made on any private act of Congress passed for the relief of any person or persons, until the act shall have been first submitted to the Secretary of the Treasury for his consideration and direction."—*Vol. 27, p. 144.*

37. When an account was confirmed by the Comptroller, and the report was sent to the War Department for a requisition, but remained without further action from July 8, 1862, to July 13, 1863, held that the accounting officers have done all that falls within the scope of their duties when they state, revise, and pass the accounts, and sign requisitions for money due the creditors of the government, and that they have no right to direct that requisition shall issue, or prescribe terms of payment.

NOTE.—Upon the recommendation of the Chief of Ordnance the requisition contained a request to allow payment through certificate of indebtedness, bearing date July 8, the date of confirmation by the Comptroller.—*Vol. 25, pp. 282, 283.*

38. The accounting officers will decide to whom payment of claims when allowed shall be made, although that right be denied by the Secretary of the Interior.—*Vol. 24, pp. 223, 224.*

39. The accounting officers are restricted to matters of account arising *ex contractu* or by operation of law.—*Vol. 24, p. 662.*

40. Where the accounting officers have jurisdiction it is their

duty to see that justice be done claimants, and that payment for property and services should not be withheld merely because the agent of the United States has failed to do an official act required by the Army Regulations. These regulations were made for the government of persons in the military service of the United States, and not for citizens, who are not amenable to them.—*Vol. 25, pp. 210, 211, 286–288.*

41. The accounting officers of the treasury cannot correct the judgment of a court of competent jurisdiction.—*Vol. 20, p. 137; vol. 18, p. 42.*

42. The accounting officers have the right to adopt the report of a committee of Congress upon which a law was reported and passed for the principles which are to govern in the settlement of accounts under the law. The passage of a bill accompanying a written report may be considered the adoption of that report.—*Vol. 19, p. 151.*

43. The accounting officers cannot correct an alleged omission of credit to an officer by a United States court in a judgment on a suit brought against said officer to recover a balance claimed by the United States.—*Vol. 19, pp. 233, 234. Post, 48.*

44. The accounting officers have no power to allow a credit claimed for money alleged to have been stolen.—*Vol. 19, p. 560.*

45. The accounting officers have no right to delegate to others the final settlement of claims, which by law they alone are authorized and directed to make.—*Case of Steamer Thomas Swain, vol. 25, p. 748.*

46. Accounting officers are not authorized to make extra allowances, either in the form of commissions or otherwise, without the sanction of the head of the department.—*Vol. 12, p. 42.*

47. It is not within the power of the accounting officers to allow a percentage to officers for disbursing funds not properly appertaining to their department.—*Vol. 7, p. 49.*

48. Where the claim of a navy agent for a certain commission was disallowed, and his account settled, it will be considered final and not to be opened, because in a similar case the action of the accounting officers was overruled by a district court of the United States. Within the sphere of their powers and duties the accounting officers are as competent to judge of and construe the laws and regulations as are the courts, and it is the established practice not to make any payment upon the mere finding of a jury, but only to credit the balance, &c., claimed by the United States. (*Opinions Attorneys General, January 4, 1823, vol. 1, p. 590.*)—*Vol. 23, pp. 208–211.*

ADVANCES.

SEE *Medical Attendance.*

49. The law of March 3, 1849, (9 Stat., 419, sec. 2,) provides that every disbursement of public moneys, or disposal of public

stores, made by order of a commanding officer of the navy, which shall be objected to by the accounting officers, shall be allowed to such disbursing officer, and the commanding officer held accountable—*Vol. 18, p. 94.*

50. This enactment does not authorize an advance of public money by the purser (now paymaster) to the commanding officer, or to any other person by his order. The disbursement presupposes an indebtedness, and whether the objects for which the indebtedness accrued were sanctioned or not by law or regulations, the purser would be entitled to a credit for payment therefor, when made by order of the commanding officer. But the disbursement must be for some service rendered, or article furnished.—*Vol. 18, p. 94.*

51. In regard to advances or loans, the laws of January 31, 1823, (3 Stat., 723,) and August 26, 1842, are not repealed or modified by the joint resolution of 1849. The 6th section of the act of August 26, 1842, (5 Stat., 536,) declares, "that it shall not be lawful for a purser in the navy to advance or loan any sum or sums of money, public or private, or any article or commodity whatever, or any credit, to any officer in the naval service, under any pretence whatever." No credits will be allowed to pursers for advances or loans hereafter made by orders of commanding officers, no matter how frequent or peremptory such orders may be.—*Vol. 18, p. 94.*

52. No person, at his own option, can create a legal claim on the United States by advancing his own private funds or borrowing money for disbursements. No lien exists against the government in such a case, and the only remedy is an application to Congress by the alleged creditor; nor has he even an equitable claim until he shows that the expenditure accrued to the benefit of the United States. See act of August 6, 1846, (9 Stat., 59;) Army Regulations par. 999, ed. 1863.—*Vol. 19, pp. 116, 350, 409, 410, 414, 415, 443, 444, 473. Vol. 30, pp. 450, 463, 479, 502, 503, 514. Vol. 21, pp. 104, 105, 120, 121, 187, 231. Vol. 24, pp. 115, 131, 132, 243, 260, 306, 307, 444.*

53. Disbursing officers are precluded both by law and the Army Regulations from using private funds for public purposes; and explanations that advances are made to fulfil promises made by such officers are not sufficient. Act August 6, 1846, (9 Stat., 63.) Regulations Second Comptroller's office, September 17, 1849.—*Vol. 22, pp. 122, 157, 158, 225-228, 253, 298, 330, 417, 435, 438, 439, 476. INDIAN AGENT, 994; PAYMASTER, II, 1546.*

AFFIDAVIT.

SEE *Evidence.*

54. The affidavit of an officer as to the correctness of his account is not satisfactory explanation of a defective voucher.—*Vol. 16, pp. 360-363.*

55. An affidavit, certifying the issue of commissary stores, may be admitted in lieu of receipts.—*Vol. 17, p. 501.*

56. No affidavit should be received as evidence unless the matter sworn to be signed by the party making the oath.—*Vol. 27, p. 132.*

57. Affidavits acknowledged before United States commissioners must be verified under the seal of the court by whom the commissioner was appointed.—*Vol. 30, p. 69.*

58. Acknowledgments may be taken before a commander of a vessel, squadron, or fleet, when no magistrate can be reached.—*Vol. 16, pp. 371–377.*

59. An affidavit that a discharge certificate has been lost or mislaid is insufficient to authorize payment. The affidavit must show positive loss; that search has been made for it, and that it has not been transferred or assigned.—*Vol. 19, p. 552.*

60. In cases where proof by one or more affidavits has been required, under the 3d section of the act of 18th May, 1826, (4 Stat., 174,) if the evidence be such as to authorize the admission to the officer's credit of the property lost or destroyed, the expense of taking the affidavits may be allowed, but no such expense will be allowed if the property was lost through the fault of the officer—*Vol. 17, p. 485.*

61. The affidavit of a soldier of the loss of his discharge papers is not sufficient to authorize payment on triplicate certificate; but he should be required to prove by his affidavit loss of duplicate certificate of his account furnished by his commanding officer upon such discharge, with the circumstances of the loss; that he has searched for them and has not found them; and that he has never been paid; that he has not sold, transferred, nor assigned the same. The rule is in such cases to delay payment six months.—*Vol. 21, pp. 132, 133.*

62. The written affidavit of a person made in the presence of two witnesses, subjects the deponent in Norway (in case of false statement, &c.) to heavy penalties. Such affidavit, supported by the certificate of the United States consul, will be received by the accounting officers as a judicial oath.—*Vol. 25, p. 641.*

63. Where a quartermaster became insane, his clerk was allowed to verify his accounts by his own affidavit in place of the usual certificate of the quartermaster.—*Vol. 24, p. 500*

64. Under a contract between a United States quartermaster and the captain of a steamboat, it was necessary to make affidavit of the number of the steamer's crew, and there being no civil magistrate near, it was held that, without settling a principle in the case presented, the affidavit might be taken before a commissioned officer. Affidavits taken before officers of the army cannot, in all cases, be recognized. Though binding *in foro conscientiae*, they are extrajudicial, and false swearing does not render liable to punishment of perjury for so doing.—*Vol. 19, pp. 345, 346.*

AGENT.

65. The agent of an incorporated company who receipts for the payment of a claim against the government must produce satisfactory evidence that he is acting within the scope of his authority. In general, the certificate of the president of the corporation that the agent is authorized to receipt will be regarded as sufficient.—*Vol.* 28, p. 500. FEES, 856; DEMURRAGE, 668.

AIDES-DE-CAMP.

SEE *Pay—Rations.*

66. An aide-de-camp to a major general is not entitled to the additional ration given to subalterns by the act of April 24, 1816, (3 Stat., 297.) The proviso in the 12th section, that one additional ration be allowed to all subaltern officers of the army does not apply to aides-de-camp.—*Vol.* 14, p. 174.

67. An aide-de-camp to a major general is not considered as having a command, within the meaning of the 1st section of the act of April 16, 1818, (3 Stat., 427,) authorizing brevet pay, the law providing that the officers of the army who have brevet commissions shall be entitled to and receive the pay and emoluments of their brevet rank when on duty, and having a command according to their brevet rank, and at no other time. Brevet pay is given only when an officer's command amounts to brevet rank.—*Vol.* 12, p. 129.

68. Under the law of January 11, 1812, (2 Stat., 671, sec. 6,) an aide-de-camp to a major general is entitled to \$24 per month in addition to his pay in the line; but that law does not authorize an allowance to aides-de-camp of forage and rations, in addition to what they receive as officers of the line. Lieutenant Kearney's case, April 11, 1844.—*Vol.* 11, pp. 311, 427.

69. In accordance with the opinion of the Attorney General of 28th April, 1834, (Opinions Attorneys General, vol. 2, p. 644,) brevet major generals have not the power to appoint more than one aide-de-camp. Act of March 2, 1821, (3 Stat., 615, sec. 5 and 6)—*Vol.* 5, p. 327.

70. Under the 10th section of the act of July 17, 1862, (12 Stat., 594,) providing for aides-de-camp on the staff of a commander of a corps, the laws of January 11, 1812, (2 Stat., 671,) June 18, 1846, (9 Stat., 17,) and July 22, 1861, (12 Stat., 268,) are held to apply in relation to the additional pay of \$24 per month.—*Vol.* 26, pp. 163, 249.

NOTE.—Under the decision of the Secretary of War, August 31, 1864, aides to commanders of corps are only allowed the pay and allowances of cavalry officers.

71. An aide to a corps commander, appointed under the 10th sec-

tion of the act of July 17, 1862, (12 Stat., 599,) has no legal claim to cavalry pay, unless he be selected from the cavalry arm of the service. When an officer has assimilated rank and pay, both are held to be those of infantry when not expressly designated. (Opinions of Attorneys General, vol. 1, p. 705, February 17, 1825; vol. 2, p. 220, July 2, 1829.)—*Vol. 26, p. 281.*

ALLOTMENTS.

72. Persons who execute allotments have a right to revoke them whenever they please. They are not intended nor can they be used to secure the payment of debts. They are allowed only to provide for the support of the families of those by whom they are signed. If the allotment be stopped by the person who executed it the attorney named has no remedy against him except what any other creditor would have.

Payments on allotment tickets are made to no other person than the attorney therein named, or some one duly authorized by such attorney, or by the Secretary of the Navy, to receive them.

An officer cannot have an allotment running unless he is absent from his family and on duty.—*Vol. 6, p. 38.*

73. When an officer of the navy is placed under stoppage, his running allotments are also to be stopped.—*Vol. 18, p. 131.*

NOTE.—The act of December 24, 1861, (12 Stat., 331,) authorizes the allotment of their pay by the volunteers in the service of the United States, and the method of assignment is prescribed by General Orders of the War Department, Nos. 81, 111, 1861, and No. 41, 1862.

APPROPRIATIONS.

74. All expenditures are payable out of the appropriations under which they were specifically made.—*Constitution, article 1, sec. 9, par. 6.* Act of March 3, 1849, (9 Stat., 363.) But by the third section of the act of September 28, 1850, (9 Stat., 507,) "moneys received by the proper officers of the army for the sales of subsistence, military stores and other supplies," are exempted from the operation of the act of March 3, 1849, (9 Stat., 398,) which requires that money received from miscellaneous sources shall be paid into the treasury without abatement or deduction, &c. And disbursing officers are sometimes authorized to retain and disburse it, without depositing it and then drawing it from the treasury.—*Vol. 17, p. 268.*

75. Where an officer of engineers applied to the improvement of the navigation of the Hudson river a large sum belonging to the appropriation for repairs of harbors on the seaboard, it was decided that he could not legally be credited, under that head of appropriation, with any portion of such expenditure.—*Vol. 30, p. 411.*

76. It is the practice of the executive departments of the government to consider an appropriation by Congress, based upon an estimate, as carrying with it authority to pay the salaries contemplated in such estimate. This practice is sanctioned by legislative action. (See act of August 31, 1852, sec. 14, 10 Stat., 99.)—*Vol. 29, p. 457.*

77. Appropriations made in conformity with estimates, and based upon them, imply an authority to make payment for the enumerated items and a legislative sanction of the objects for which the appropriations were asked. *Vide* the legislation of Congress on this subject, acts of July 21, 1852, sec. 5, (10 Stat., 24,) and August 31, 1852, sec. 14, (10 Stat., 99.)—*Vol. 29, p. 471.*

78. Where an appropriation is made for a specific purpose, the balance remaining after the object of the appropriation has been satisfied cannot be used for any other purpose than that specified in the act; and the accounting officers have no authority to admit vouchers, except such as are in conformity with the laws and regulations.—*Vol. 28, p. 144.*

79. The balance of an appropriation in the hands of a disbursing officer is applicable to expenditure, though the balance of that appropriation on the books of the treasury may have been carried to the surplus fund.—*Vol. 16, p. 45.*

80. When a disbursing officer draws money from the treasury under one head of appropriation and expends it under another, if the expenditure be right in itself and correct otherwise than in the appropriation, the proper transfer requisition will issue in the settlement of his account to take the money from the proper appropriation and carry it to the credit of the appropriation from which it was erroneously disbursed. If, however, the appropriation to which the expenditure was chargeable be exhausted at the time of disbursing, the officer cannot receive a credit unless Congress shall make a new appropriation.—*Vol. 27, p. 151.*

81. No credits will hereafter be allowed to disbursing officers for payments, under an appropriation over and above the amount received by them under that head, when such appropriation shall have been exhausted at the time of settlement of their accounts. See regulations Treasury Department, December 19, 1854.—*Vol. 18, pp. 61, 62, 242.*

82. When a certain rate of pay is estimated for, and Congress appropriates in conformity with the estimates, that rate of pay may be allowed.—*Vol. 17, p. 322.*

83. In the settlement of any account in which a sum is checked from the appropriation for "pay of the marine corps" on account of clothing overdrawn, the amount checked must be transferred to the credit of the appropriation for clothing of marine corps.—*Vol. 17, pp. 492-494.*

84. Indefinite appropriations, or appropriations indefinite, within a maximum, have always been considered applicable to the payment of valid claims proved under them. And where proof has been dis-

covered and produced, several successive settlements have been made.—*Vol. 25, pp. 518, 519.*

85. Under the law of 1836, the President had the power to make transfers from one head, of appropriation for fortifications, to another within the year for which made, and this embraces contingencies of fortifications.

NOTE.—For legislation as to transfers by the President, see acts of March 21, 1794, (1 Stat., 346;) March 20, 1794, (1 Stat., 345;) May 9, 1794, (1 Stat., 367;) March 3, 1809, (2 Stat., 535;) March 3, 1817, (3 Stat., 359;) April 14, 1820, (3 Stat., 562;) May 1, 1820, (3 Stat., 567;) March 3, 1821, (3 Stat., 633;) July 2, 1836, (5 Stat., 77;) August 31, 1852, (10 Stat., 105.)—*Vol. 26, pp. 11–16.*

86. Transfers of money from one appropriation to another must be carried out through the formalities of a treasury appropriation warrant, emanating from the Secretary of the Treasury, on the recommendation of a head of department or President. Acts of August 26, 1842, (5 Stat., 533, sec. 23,) and August 31, 1852, (10 Stat., 107, sec. 2.)—*Vol. 20, pp. 360, 361.*

87. The agent of the Topographical Bureau expended a sum greater than the appropriation, act of August 30, 1852, (10 Stat., 56,) for the construction of snag-boats, &c., and paid the excess out of the appropriation for improvement of rivers. The account was disallowed. The boats were afterwards sold for less than the excess. Held that the proceeds of sale of the boats should be credited to the appropriation for their construction, and would become available for unpaid debts contracted for their construction, or for outstanding expenditures on that account made wrongfully from other appropriations.—*Vol. 19, p. 420.*

88. When the Second Comptroller of the Treasury is directed by a warrant of the Secretary of the Treasury to transfer a sum of money from one appropriation to another, and the transfer is made in obedience to such warrant, he cannot, without similar authority, restore the money to the appropriation from which it was taken.—*Vol. 10, p. 341.*

89. The expenses of courts-martial in any branch of the public service must be charged upon the proper appropriation for that branch or department.—*Vol. 14, p. 87.*

90. The appropriation in the river and harbor bill of August 30, 1852, (10 Stat., 56,) may legally be applied to the payment of claims accrued prior to the fiscal year 1852-'53, if fairly within the provisions of the act. But the approval of the Secretary of War should be obtained before money is so applied.—*Vol. 15, p. 429.*

91. From and after the 1st of July, 1851, the allowance of pocket money to navy pensioners, and the pay of compensation of all persons borne on the rolls of the Naval Asylum, and not specially provided for in the estimates of the Navy Department for that institution, shall be charged to "navy hospital fund."—*Decision Secretary Navy, May 2, 1851.*

92. Machinery for the ropewalk is to be charged upon the appropriation for the navy yard.—*Vol. 9, p. 397.*

93. All stoves, grates, fixtures of every kind, cooking utensils, carpeting, and furniture for national vessels, are chargeable upon the appropriation "for the increase, repair, armament, &c.," of the navy, and when required for furnishing buildings or offices attached to a navy yard, are chargeable to the appropriation for that yard.—*Vol. 9, p. 368.*

94. There is no head of navy appropriation to which payments to clerks in the Patent Office for making copies of papers for the use of the Navy Department, can properly be charged.

It is the duty of every department of the general government to furnish, without charge, to every other department, all copies from its records that may be properly required for official use.—*Vol. 15, 255. TRAVEL PAY, I, 2086.*

ARBITRAMENT AND AWARD.

95. Awards of boards and referees may be taken as advisory matter, and when supported by other evidence of reasonableness and equity, and approved by the head of the department where the claim originated, they will be affirmed and carried out.—*Vol. 23, pp. 435, 436, 498, 499.*

ARMY REGULATIONS.

96. The act of March 3, 1813, (2 Stat., 819,) authorized the preparation of the regulations for the army, which, when approved by the President, shall be respected and obeyed until altered or revoked by the same authority, or by Congress. By the act of April 24, 1816, (3 Stat., 297,) the regulations were made subject to such alterations as the Secretary may adopt with the approbation of the President. Regulations so adopted stand as law, and no officer can make a selection of such as he may choose to obey and disobey the rest.—*Vol. 25, pp. 212-567.*

See also decision of Supreme Court, in 15 Peters, 336, to same effect. See also act July 28, 1866, (14 Stat., 388,) giving regulations continuance and force.

97. Regulations of the War Department, made in pursuance of law, are binding as law, upon all concerned.—*Vol. 11, p. 173; vol. 25, pp. 212, 567.*

98. When an expenditure for repairs was made on the order of the commanding officer of a post, payment for which was disapproved by the War Department as not being authorized by the regulations, and for which no appropriation had been made. Held that the Secretary of War having decided that the expenditure was improper, the matter is *res judicata*. Paragraph 1028, Army Regulations, 1841; paragraph 17, ed. 1855.—*Vol. 20, p. 100.*

ASSISTANT COMMISSARY.

SEE *Quartermaster*.

99. Act April 14, 1818, (3 Stat., 427, sec. 6.) authorizes appointment of assistant commissaries of subsistence from subalterns of the line who shall receive additional \$20 per month, &c, and give bond. This section was continued for five years and no longer.

NOTE.—But by act of March 2, 1829, (4 Stat., 360, sec. 1.) the time was extended “to the end of the next session of Congress thereafter, and no longer,” (1st session 21st Congress.) But the Attorney General, Butler, gave an opinion on the 16th of April, 1836, (Opinions Attorneys General, vol. 3, p. 84,) that the 8th section of the act of 1821 was intended as a permanent provision, and though not enumerated in the act of March 3, 1835, which in terms rendered permanent only certain sections of the act of 1818, that opinion has been adopted and the additional compensation continued.—*Vol. 27, p. 134; Vol. 16, p. 473.*

100. Subalterns acting as assistant commissaries of subsistence for not less than one month may receive the extra compensation of twenty dollars per month, less one ration per day, on the certificate of the Commissary General, provided the officer's returns and accounts shall have been properly rendered for the time charged. When the Commissary General declines giving the certificate the officer cannot be paid.—*Vol. 18, p. 251; vol. 20, pp. 205–208.*

101. An assistant commissary of subsistence is entitled to twenty dollars per month additional pay if he has given bonds and performed the duties of his office.—*Vol. 16, pp. 276–278.*

102. It was decided by the Secretary of War, May 17, 1851, that acting assistant quartermasters and acting assistant commissaries of subsistence are “unauthorized by law, and that the officers cannot legally receive credit for transfers made by them to other persons of funds placed in their hands for disbursement; but from the necessities of the service officers are employed in these capacities, and their official acts as such are recognized and sanctioned.”—*Vol. 27, p. 132.*

103. Officers of engineers, topographical engineers, and ordnance, do not belong to the line of the army, and are not, therefore, entitled to \$20 additional compensation for acting as assistant commissaries under the act of April 14, 1818, (3 Stat., 426, sec. 6.)—*Vol. 15, p. 147.*

104. A subaltern of the army doing duty as acting assistant commissary, and who is at the same time commandant of a permanent post or garrison, is entitled to twenty dollars per month additional, less one additional ration, and double rations for commanding as above; and if he be in command of a full company, he is entitled to ten dollars per month for care of arms, &c. Act of March 2, 1827, (4 Stat., 227, sec. 2;) August 23, 1842, (5 Stat., 513, sec. 6.)—*Vol. 17, p. 465; vol. 27, p. 174.*

NOTE.—The allowance of double rations was repealed by the act of August 3, 1861, by section 19, (12 Stat., 290.)

105. Officers of the medical corps do not belong to the line of the army, and are not entitled, while acting as assistant commissaries, to the additional compensation given by the act of April 14, 1818, (3 Stat., 427, sec. 6.)—*Vol. 15, p. 407. QUARTERMASTER, 1767.*

ATTACHMENT.

106. Disbursing officers are not liable as garnishees. To admit the principle would be equivalent to surrendering the government to the creditors of persons having claims against it, and no claim of magnitude would be likely to pass the treasury without impediment.—*Vol. 28, p. 533*

107. A disbursing officer of the United States is not liable as the garnishee of contractors employed by him, in behalf of the government. But if adjudged so liable, by a court of competent jurisdiction, he may safely pay over the amount due the contractor, in accordance with the judgment, and a certified copy of the record and the receipt of the plaintiff will be a sufficient voucher for the Treasury.—*Vol. 8, p. 133.*

See opinion of Attorney General, vol. 2, p. 661, August 5, 1834, and vol. 3, p. 718, November 29, 1841. Also *Buchanan vs. Alexander*, 4 Howard, p. 20.

108. The Supreme Court decided, January term, 1846, in the case of *McKean Buchanan vs. James Alexander*, that money in the hands of a purser, although due to seamen, is not liable to an attachment by the creditors of those seamen. The court said that "a purser, (now a paymaster,) it would seem, cannot be distinguished from any other disbursing officer of the government. If the creditors of these seamen may, by process of attachment, direct the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers and men of the army and of the navy, and also in every case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service." The accounting officers adopt a similar rule in the settlements at the treasury.—*Vol. 27, p. 175.*

109. No trustee process, garnishment, injunction, or attachment can be recognized by the disbursing or accounting officers in respect of money due creditors of the United States. See *Opinions Attorneys General*, August 5, 1834, vol. 2, p. 661, and November 9, 1841, vol. 3, p. 718. *Buchanan vs. Alexander*, 4 Howard, 20.—*Vol. 29, p. 635.*

ATTORNEY.

SEE *Power of Attorney.*

BAILMENT.

110. A surgeon of a hospital who takes charge of a soldier's money merely for safe-keeping, which money is stolen from the office desk, is not responsible for the loss, unless negligence and lack of ordinary care on the part of the surgeon are shown.—*Vol. 25, p. 342.*

111. And where the surgeon of a regiment received a sum of money from a private soldier, with instructions, in case of accident to him, to send by express to his son, and the soldier was taken prisoner, and the surgeon, being relieved from duty, turned over the money—there being no agency of the express company—to the lieutenant commanding the company to which the soldier belonged, and afterwards the lieutenant intrusted the money to B, at Washington, contrary to the instructions of the surgeon to forward by express, and it never was delivered. Held that the lieutenant was responsible for the bailment.—*Vol. 29, p. 148.*

112. A surgeon at Fort Yuma, New Mexico, forwarded his account receipted to the medical director at San Francisco, requesting him to send the amount, less the tax, in government funds. The latter drew his check upon the medical purveyor, who cashed the same in legal-tender currency, and, enclosed in an envelope, delivered the money to the hospital steward to deposit in the post office. The steward stole the money, and, in a claim made by the surgeon for restitution, it was held that the medical purveyor was liable for not delivering it into the post office, and that the stoppage against his pay for the amount stolen was proper.—*Vol. 29, pp. 261, 262.*

113. The United States, as bailee of a horse hired and lost or destroyed in service, is not liable for the value thereof, provided ordinary and usual care was taken for the preservation of the property hired—the pay for ordinary risks and casualties being a part of the hire. If the horse was lost by the neglect or fault of an agent of the United States, the owner would have a claim for his value and the payment thereof would be right, and the horse, if found, would then become the property of the United States.—*Vol. 18, pp. 282, 283.*

BANKRUPT.

114. Payment of a debt due a bankrupt will be made to his assignee. Act of March 2, 1867, (14 Stat., 522.) The proof of the appointment of an assignee is the certificate of the judge of the United States district court or of the register.—*Vol. 31, p. 63.*

BILLS OF EXCHANGE.

SEE *Drafts—Checks.*

115. While the first indorsement of a bill remains blank, the right of the holder to recover as the immediate assignee of the first indorser

is not restricted by subsequent indorsements. Even if those indorsements are all in full, so that the holder could deduce a regular title through them, he is not bound to do so, but may strike them all out, and claim simply under the first blank indorsement.—*Vol. 13, p. 157.*

116. The drawee of a bill of exchange ought not to be required to make payment, unless the instrument itself furnish the proof, by indorsement, that the claimant is legally entitled to receive it.—*Vol. 13, p. 198.*

117. It has been the uniform practice in the settlement of accounts not to allow interest or damages on protested bills, drawn and protested under any circumstances whatever.—*Vol. 2, p. 1.*

118. The costs on protested bills are not to be paid by the government, except under special act of Congress.—*Vol. 11, p. 497; vol. 10, p. 481.*

119. Drafts, or bills of exchange, drawn by disbursing officers in California shall be paid from the sub-treasury there.—*Vol. 17, p. 80.*

120. Disbursing officers are to be charged with the premium that they may have received on bills of exchange drawn in California and paid in New York.—*Vol. 17, p. 81.*

121. A naval paymaster on a foreign station draws bills of exchange for pounds sterling, selling them at the current rate of exchange, and disbursing them at the same value. The premium from the sale of the draft is credited to the government, the loss from the sale charged to the government.—*Vol. 29, p. 165.*

122. By the act of July 27, 1842, (5 Stat., 496,) in all payments by or to the treasury of the United States, whether at home or abroad, when the value of the pound sterling is to be computed, it shall be deemed equal to \$4 84. An officer in a foreign country who draws by permission on an agent of the government in sterling, and receives in payment the currency of the country where he may be, cannot be paid for any loss on that currency when converted into dollars.—*Vol. 12, p. 327.*

123. In making up their accounts in dollars and cents, the correct practice for naval paymasters is to calculate the pound sterling at \$4 44, and if a premium or gain has been realized on any draft or bill of exchange, to credit the United States with the amount of the premium or gain, and if a loss has been sustained, to charge the loss to the United States in their accounts.—*Vol. 28, pp. 325, 326, 612, 613.*

124. Discount is allowed to a disbursing officer of the army on bills negotiated by him without the limits of the United States.—*Vol. 11, p. 16.*

125. A payment being made on board of a United States vessel to an officer in a coin (Peruvian dollars) which is legal tender in the United States, and of the same intrinsic value as American dollars, (Ex. Docs. 2d sess. 23d Congress, vol. 2, Doc. 6,) he cannot be allowed for any loss he may suffer in exchange on the same.—*Vol. 27, p. 191. PAYMASTER, II, 1537.*

BILLS OF LADING.

126. The master is presumed to have a knowledge that the bill of lading is correct when he signs it; and as it contains his acknowledgment that the articles described have been shipped on board his vessel, he is answerable for them according to their description in the bill of lading, and in compliance with his contract. He may, however, be permitted to show a mistake, as that some of the packages did not contain what they were represented to contain.—*Vol. 12, p. 137.*

127. Bills of lading are not required for transportation by land if the goods are otherwise shown to have been received.—*Vol. 19, p. 252.*

128. Where the bill of lading contained a memorandum printed in the margin, which provides that if, on arrival at the port of destination, the consignee should order the vessel to another place to discharge, the order in all cases shall be in writing on the bill of lading. Held that this memorandum becomes a part of the contract, after the signature of the master to the bill of lading, but the stipulation that the order changing the port of destination should be in writing does not constitute a condition precedent so as to invalidate an admitted verbal order to proceed to another port.—*Vol. 29, pp. 380, 638.*
BONDS, 155.

129. And where a vessel received such an order, and was proceeding to sea, and, while crossing the bar at the entrance to the harbor, grounded, in consequence of which injuries were sustained. Held that the repairs of such injuries came within the marine risk, to be borne by the owner.—*Ibid.*

130. Primage is not regarded as a part of the contract in a bill of lading as between the carrier and the shipper.—*Vol. 28, p. 629.*
FREIGHT, 885.

BOATS' CREW.

131. The expenses of boats' crews visiting the shore in foreign ports will not be allowed except in cases of unavoidable detention more than one day; and in such cases only for the time detained beyond what was expected when the boat left the ship, upon a voucher duly approved, setting forth the cause and time of such detention, and the number of the boat's crew. For that time rations will not be issued to the boat's crew. *Circular from Navy Department, October 21, 1834.*

132. The Secretary of the Navy, on the 17th June, 1848, authorized the commander of the yard at Norfolk to hire a boat's crew of colored men, whether slaves or not, for the use of the yard and receiving ship.

BONDS.

SEE *Comptroller's Office.*

133. A bond must be a sealed instrument, though it is not necessary to say in the body of it that it is sealed. It is sufficient if the seals of the obligors be affixed to the bond.—*Vol. 20, p. 109.*

134. The accounting officers have no power to require new bonds or security to be given, or to give up any bond on file. Commissaries and quartermasters are required to renew their bonds every four years; and in thus renewing a bond an officer can virtually close up his accounts and exonerate his old bail from further liabilities. But the bond must remain on file. *Army Regulations*, edition 1857, p. 891.—*Vol. 22, p. 242; vol. 31, p. 630. COMPTROLLER'S OFFICE, 519.*

135. The sureties of an officer are responsible for moneys handed over to him by his predecessor in office, and for those transmitted to him by another officer to disburse officially. (See 15 Howard, 143.)—*Vol. 31, p. 629.*

136. The death of a surety after a bond is signed and sealed, and after it has been put in transmission to the Comptroller, but before approval or reception, does not discharge estate of surety. (See 15 Howard, 155; 12 Wheaton, 64.)—*Vol. 31, p. 629.*

See 9 Wheaton, 720, as to bonds for appointments in recess of Senate, &c.

Generally, see laws of May 15, 1820, (5 Stat., 582,) giving President power to increase bonds, &c.

137. The Comptroller of the Treasury has no power to relinquish security or to require new or additional security.—*Vol. 11, p. 329.*

138. No provision having been made by law for cancelling or discharging official bonds to the government, the uniform practice has been for the government to retain the custody of the bonds, although the office of the principal may have expired, and his accounts may have been satisfactorily settled.—*Vol. 14, p. 199.*

139. An omission to execute a bond in the presence of witnesses does not render it so informal as to invalidate it. If the handwriting of the obligor can be proved, the bond is as valid without it as it would be with witnesses.—*Vol. 14, p. 66.*

140. Where in a bond it recites, "We, the sureties, do bind ourselves and each of us," &c., "for and in the whole, jointly, severally, and firmly," and the sureties, each for himself, limit the amount for which they will be holden—and such amount is less than the whole penalty. Held that such bond is irregular, and cannot be certified to be correct and in legal form.—*Vol. 23, pp. 195, 213.*

141. In a case where the term of office is limited, an official bond expires with the appointment. When the appointment is continuous, the additional bonds given are merely cumulative, and do not release the sureties on former bonds.—*Vol. 19, pp. 360, 361.*

142. B irregularly commissioned as commissary of subsistence gave bonds. Afterwards being regularly appointed and commissioned, he performed duty without filing a new bond. Held that the first commission being void, so was the bond, and that while thus performing duty he is acting upon his individual responsibility.—*Vol. 25, pp. 173, 174.*

143. The obligors of a paymaster's bond are jointly and severally holden to the full amount to obligees. And when there is a clause limiting the liability of the obligors severally, the bond will be deemed informal and defective, and returned for correction.—*Vol. 23, pp. 195, 213.*

144. The duration of an appointment may be terminated in various ways; by its own limitation, by removal from office, by death, &c., but bonds for the faithful performance of duty under an appointment are never surrendered, but kept on file.—*Vol. 18, p. 263.*

145. A bond takes effect from its date, or from delivery, unless otherwise specified therein, and no department has any authority to change its terms and conditions in the smallest particular after it is executed and filed.—*Vol. 18, p. 294.*

146. The acceptance of a new bond as a substitute for that on file rests with the department that accepted the first one, the duty of the Comptroller being confined to receiving and taking charge of bonds filed, and the revision of accounts arising under them. And under a new bond the account must be settled to the date of the last bond, and the balance due the United States paid over. A certificate of the settlement will be furnished on the final adjustment of the account, but the bond will be retained.—*Vol. 25, p. 259.*

147. The certificate of the Comptroller will not be affixed to the paymaster's bonds, unless the same are stamped according to law.—*Vol. 25, p. 119.*

148. Official bonds usually are stamped, and, by decision of Commissioner of Internal Revenue, stamps must be affixed by United States officer to all instruments, except those which, if stamped, would be a charge to the treasury. (February 28, 1863.) But the duty of requiring stamps to be affixed being an administrative question of the department requiring the bond, this office cannot refuse to file the same without the stamp.—*Vol. 25, pp. 331, 332.*

149. The act of July 1, 1862, (12 Stat., 475, sec. 95,) must be literally complied with in respect of stamps attached to the certificate of a district judge, or the Secretary of State, &c., upon a bond, &c.—*Vol. 25, pp. 214, 215.*

150. It is the uniform practice to disallow pay to paymasters in the navy prior to date of filing bond.—*Vol. 25, p. 133.*

151. The co-sureties on a bond being jointly and severally holden for

the payment of the sum specified in the recital, payment of his proportional part by one of the sureties will not effect his release.—*Vol. 29, p. 254.*

152. Where there were two appointments of an officer, the obligations of a bond given for the first appointment do not extend to any acts done under the second appointment, the liability of the sureties being confined to the first commission. (See *United States vs. Kirkpatrick et al.*, 9 Wheaton, 720.)—*Vol. 29, p. 658.*

153. The words "heirs, executors, administrators, or assigns," are essential in a bond of indemnity.—*Vol. 29, p. 337.*

154. Bonds of indemnity required by disbursing officers whose accounts are revised by the Second Comptroller, before making payment of claims for which the vouchers have been lost or destroyed, must in all cases be approved by the Second Comptroller before payment is made.—*Vol. 28, p. 288.*

155. Where the original bill of lading was lost, a bond of indemnity sufficient to protect the government from any damage that may arise in consequence of its loss may be received in lieu of it.—*Vol. 29, pp. 244, 245.*

156. Where vouchers for Indian service in Oregon and Washington were incomplete in consequence of the agents retaining one to make up their accounts, and it afterwards being impossible to furnish the voucher, the agent having died, a bond of indemnity to protect the government against the presentation and payment of the missing voucher will be filed by claimant to entitle him to credit for the amount of the voucher.—*Vol. 28, p. 25.*

157. In a bond of indemnity where it appeared that the name of the firm, instead of the individual partners, is signed to the bond, which is under seal, the sureties are liable notwithstanding the informality, their liability being based upon the fact of an obligation on the part of the principals who would be holden on simple contract.—*Vol. 29, p. 72.*

158. The omission to describe the "office," in the condition of a bond, is a fatal defect.—*Vol. 14, p. 78.*

159. The official bonds of disbursing officers or agents, which are filed in the office of the Second Comptroller, are not surrendered on the final settlement of their accounts.—*Vol. 11, p. 332; vol. 10, p. 8.*

NOTE.—The law of 1798 relates to contracts only which are required to be filed with the Comptroller.

160. When bonds are renewed by disbursing officers, settlement should be required under the old bonds.—*Vol. 22, p. 563.*

BOUNTY.

SEE *Colored Soldiers—Deserters.*

I. WHO ARE ENTITLED TO RECEIVE.

- a.—*Generally.*
- b.—*Under the acts of July 22, 1861, and July 11, 1862.*
- c.—*Under the act of July 4, 1864.*
- d.—*Under the act of July 28, 1866.*

II. DESCENT.

- a.—*Generally.*
- b.—*Under the acts of July 22, 1861, and July 11, 1862.*
- c.—*Under the acts of July 4, 1864, and July 28, 1866.*

III. REGULARS AND DRAFTED MEN.

IV. TRANSFERRED FROM ARMY TO NAVY.

V. MARINE CORPS AND NAVY.

VI. FOR WOUNDS IN BATTLE.

VII. DISCHARGED FOR PROMOTION.

VIII. ADVANCES, DEDUCTIONS, AND REPAYMENTS.

IX. EVIDENCE.

X. WITHHELD ON ACCOUNT OF CRIMINALITY.

I.—WHO ARE ENTITLED TO RECEIVE.

a.—*Generally.*

161. Where there is proof that the father has abandoned the support of his family, payment of bounty and arrears of pay may be made to the mother of a deceased soldier.—*Vol. 24, p. 518.*

162. The wife of a soldier held a prisoner of war in the hands of the enemy may be paid his arrears and bounty, provided she adduce satisfactory evidence of that fact, of her identity as his wife, and that he had authorized payment to her of arrears and bounty.—*Vol. 26, p. 271.*

163. Payment of bounty and arrears of pay will be made to the guardian of a lunatic ward only when it appears that claimant contributed to his ward's support, or that the ward has a family or creditors, or that he will be called upon to expend the money for the benefit of his ward. Otherwise the money should remain in the treasury for the ward when he recovers or for his heirs in case of his death.—*Vol. 29, p. 336.*

164. Nine months' prior service in the navy does not qualify a man to enlist as a veteran under General Orders 191, 1863, so as to entitle him to the bounty provided by that order.—*Vol. 28, p. 185.*

165 A soldier enlisting January 8, 1864, transferred to the Veteran Reserve Corps, and discharged by reason of the close of the war, is

entitled to the balance of bounty the same as if he had remained with his regiment. And although he had been transferred to the Veteran Reserve Corps and was discharged from that organization, his right to the bounty is not thereby impaired.—*Vol. 28, p. 456.*

166. Men enlisted in the Veteran Reserve Corps are not entitled to bounty; but men disabled in the service, who have been transferred from other organizations, and serve the remainder of their term of enlistment in such corps, do not forfeit the bounty promised them on their original enlistment. (See General Orders No. 130, 1863.)—*Vol. 28, p. 619.*

167. Bounty is not paid to a person standing in *loco parentis*.—*Vol. 28, p. 702.*

168. A soldier captured by the enemy, and subsequently released, arrived in a loyal State after his term of service had expired. For using violent and abusive language to his superior officers, he was sentenced by court-martial to three months' imprisonment, and then to be dishonorably discharged. Held, that as his pay stopped on his arrival in a loyal State, his discharge dates from that time, and that he could not subsequently be discharged so as to forfeit bounty pursuant to sentence for a crime committed after his discharge.—*Vol. 28, p. 765.*

169. Men enlisting in the Veteran Volunteers, mustered out of service before the expiration of their term of enlistment, either on account of wounds, (by close of war,) or because their services are no longer needed, are entitled to the whole amount of bounty remaining unpaid. (See General Orders 191, June 25, 1863.)—*Vol. 28, p. 714.*

170. The law makes no provision for the appointment of guardian of minor Indians, and payment of bounty in such cases must be suspended until Congress provides a remedy.—*Vol. 31, p. 408.*

171. Where one enlisted as under-cook, for three years, but, before the expiration of his term of service, was promoted to be a private. Held that for the time he served as cook he is only entitled to the pay and allowance prescribed by law for that grade; but that for the time he held the rank and performed the duties of a soldier, he is entitled to the pay and allowance of a soldier, including such bounty as matured after his transfer to the ranks.—*Vol. 31, p. 405.*

172. And if discharged for ordinary disability, the time he served as under-cook could not be reckoned as a part of the two years' service required by act of July 22, 1861, in order to entitle him to bounty; but if discharged as a private for wounds, or services no longer required, he would be entitled to full bounty under the acts of July 22, 1861, and July 28, 1866, or to the balance of the increased bounty, less the instalments accrued during the time he served as cook.—*Ibid.*

173. A soldier having served as clerk in the War Department nearly two years is not entitled to veteran bounty on his discharge from service, by reason of the muster out of his regiment.—*Vol. 29, p. 226.*

NOTE.—Modified by joint resolution of July 13, 1866, (14 Stat.

363,) giving the same right to bounty as if he had been with his regiment.

174. Where one enlisted in the general service to be detailed for clerical duty he is not entitled to bounty, which is given for the risk a soldier as such incurs. Had he served in the field as an enlisted man, attached to a company and regiment, until an instalment of bounty had become due, he would be entitled to such matured instalment, though immediately afterwards detached on service as clerk, and discharged as such.

NOTE.—Joint resolution of July 13, 1866, allows bounty after that date.—*Vol. 28, p. 286.*

175. Bounty is not given for enlistment or re-enlistment in the invalid corps, but a soldier transferred from the effective ranks to that corps does not thereby forfeit his right to bounty promised in his contract of enlistment. His service is continuous, and he is entitled to the successive instalments of bounty as they accrue.—*Vol. 28, p. 159.*

176. Soldiers detailed as clerks are not legally entitled to bounty while on duty in the military or other offices and drawing the pay and allowances of a clerk.—*Vol. 28, p. 436.*

NOTE.—By joint resolution of July 13, 1866, (14 Stat., 363,) the soldier was declared not to lose his right to bounty by such detail.

177. Soldiers detailed as clerks in the Adjutant General's office are not entitled to have the time while so detailed counted in estimating the amount of bounty. (See order of Secretary of War of April 7, 1864.)

NOTE.—Modified by joint resolution of July 13, 1866, allowing such time to count for bounty.—*Vol. 28, p. 499.*

178. A veteran soldier thus detailed and mustered out with his regiment made no claim for the bounty maturing while employed as clerk, but claimed that under the fourth paragraph of General Orders 191 he was entitled to be put on the same footing as the rest of the regiment to whom the bounty was paid. Held that a soldier enlisting in the veterans under the above order is not entitled to any instalment of bounty maturing while detailed on duty as a clerk in a department, but that if discharged with all the men of his regiment because their services were not required for the full period of enlistment, he must be put on the same footing as the rest of his regiment in regard to bounty maturing subsequent to discharge. (See joint resolution of July 13, 1866.)—*Vol. 28, p. 499.* HOSPITAL STEWARD, 970; COMPTROLLER'S OFFICE, 530; REPRESENTATIVE RECRUITS, 1923, 1924; SUBSTITUTE, 1960.

b.—*Under the acts of July 22, 1861, and July 11, 1862.*

179. Under the acts July 22, 1861, (12 Stat., 269,) and July 29, 1861, (12 Stat., 281,) a volunteer transferred from one branch of the military service to another is not thereby precluded from payment of bounty.—*Vol. 25, p. 255.*

180. *Seem* that a soldier of the United States reserve corps, being a body of Missouri State troops transferred to three-years volunteers, is, under the act of July 22, 1861, sec. 5, (12 Stat., 270,) entitled to bounty.—*Vol. 25, pp. 577, 578.*

181. Musicians mustered out of service before the expiration of two years are not entitled to bounty. Act of July 22, 1861, (12 Stat., 270, sec. 5,) and July 17, 1862, (12 Stat., 594, sec., 5.)—*Vol. 24, pp. 661, 662.*

182. Bounty is payable to ordnance men provided they enlisted in other arms of the military service, and were afterwards transferred to the ordnance, if the other conditions are fulfilled.—*Vol. 26, p. 283.*

183. A veteran, who has served over two years, is entitled to retain the bounty he has received in instalments, and to be paid \$75, the remainder of the bounty, under the act of July 22, 1861, (12 Stat., 270.)—*Vol. 26, p. 222.*

184. The 13th regiment New York volunteers enlisted under State laws for two years, was mustered into the United States service for three months, and was afterwards continued in service for the whole period of two years. The other two-years' regiment, were mustered in for the whole period. Held that this difference of muster, being immaterial, cannot justly deprive the members of the 13th of any rights; and the heirs of soldiers killed at Bull Run July 21, 1861, (belonging to this regiment,) on proof, are entitled to the \$100 bounty. Acts of July 22, 1861, (12 Stat., 270, sec. 6,) of July 24, 1861, (12 Stat., 274,) of July 29, 1861, (12 Stat., 282, sec. 3,) and of July 11, 1862, (12 Stat., 535, sec. 3.)—*Vol. 25, pp. 244, 245.*

185. Enlisted men only, and not commissioned officers, are entitled to the bounty provided by law. Acts of July 22, 1861, sec. 6, (12 Stat., 270,) and July 11, 1862, sec. 1, (12 Stat., 535.)—*Vol. 24, pp. 439, 440.*

186. The service must have been consecutive to entitle discharged soldiers to the bounty under the law of July 22, 1861, (12 Stat., 270, sec. 5.)—*Vol. 24, pp. 458, 459, 489.*

187. A volunteer honorably discharged, after serving two years, is entitled to bounty by the act of July 22, 1861, secs. 1 and 5, (12 Stat., 268,) no matter at what time he entered the service since the commencement of the rebellion.—*Vol. 25, pp. 324, 325.*

NOTE.—The solicitor of the War Department held that a soldier who enlisted prior to the law of July was not entitled to bounty, but the Secretary of War (September 19, 1863) coincided with the Comptroller in the construction given by him.

188. A soldier whose discharge was to take effect at a future day, which date completed the three years for which he enlisted, is entitled to the \$100 bounty, under the act of July 22, 1861, because he could have been held to military service and punished for military offences for the whole period of his enlistment.—*Vol. 30, p. 112.*

189. A soldier discharged after less than two years' service to re-

enlist as Veteran Volunteer in the same regiment, and finally discharged from service three years from his first enlistment by reason of close of the war, is not entitled to veteran bounty, but only to \$100 on final discharge, his service being regarded as continuous.—*Vol. 29, p. 569.*

190. A soldier discharged from his first enlistment, under the act of July 22, 1861, for cause other than wounds or sickness incurred after enlistment and in the performance of duty, or for close of the war, before having served two years, is not entitled to bounty for that service. If discharged for wounds, the whole bounty is to be paid; if for sickness, the advance of \$25 only.—*Vol. 29, p. 478.*

191. The law makes no provision for bounty under the act of July 22, 1861, to men discharged the service in less than two years after enlistment, unless their discharge be for wounds received in the line of military duty, or for close of the war.—*Vol. 28, p. 623.*

192. A soldier, enlisted October 1, 1861, for three years, died in a rebel prison October 21, 1864. The father residing in Ireland made application for \$100 bounty under act of July 22, 1861, (12 Stat., 270, sec. 5.) Held that the gratuity not being recovered by the beneficiary during his life, and not recoverable by his heirs, as would be bounty under the act of March 3, 1863, (12 Stat., 734, sec. 18,) could not be paid to the father.—*Vol. 30, p. 108.*

193. Volunteers (or regulars, if enlisted after July 1, 1861,) are entitled to \$100 bounty, if discharged before expiration of period of service for the reason that the "war is ended," or for an equivalent reason, to wit, "that their services are no longer needed."—*Vol. 28, p. 234.*

194. The acts of July 22 and 29, 1861, (12 Stat., 270, sec. 5 and 281, sec. 5,) authorize payment of bounty, the former to volunteers, the latter to regulars enlisted after July 1, 1861. The act of July 28, 1866, (14 Stat., 322, 323, secs. 13, 14, 15, 16,) does not authorize bounty for enlistment prior to April 14, 1861. *Vol. 30, p. 91.*

c.—Under the act of July 4, 1864.

195. Applications for bounty were made by the fathers of two soldiers enlisted under the act of July 4, 1864. The payment of \$33½ in one case, and the rejection of the claim in the other, is thus explained: accrued instalments due and unpaid at the date of the death of the soldier are put on the same footing as pay, and paid to fathers or other heirs entitled to the pay, but instalments, not then matured, are paid to widows, children, and widowed mothers only.—*Ibid; vol. 29, p. 42.*

196. A soldier discharged in March preceding the promulgation of General Orders No. 77, of April 28, 1865, was considered not to have been discharged under orders for the reduction of the army, and therefore not entitled to instalment of bounty not matured.—*Vol. 30, p. 354.*

197. Volunteers, under the act of July 4, 1864, (13 Stat., 379,) discharged before the expiration of their term of enlistment because their services were no longer necessary, are only entitled to that proportion of the bounty which has actually matured at the date of discharge.

198. A soldier enlisting prior to the date of the President's call for troops, under the 1st section of the act of July 4, 1864, (13 Stat., 379,) is not entitled to the bounty provided by that act.—*Vol.* 28, *p.* 342.

199. A private soldier was discharged at Savannah, Georgia, having served six months, lacking 18 days. Final payment of the regiment was not made at the place of discharge, but at the place of original rendezvous, after the period of six months had expired; but it was held that the claim for the second instalment of bounty under the act of July 4, 1864, (12 Stat., 379,) could not be allowed.—*Vol.* 28, *pp.* 586–588.

200. A soldier discharged at his own request is, under the terms of his enlistment, not entitled to any instalments of bounty beyond those which fully matured while he was in service.—*Vol.* 28, *p.* 633.

201. Where a soldier enlisted August 16, 1864, under the act of July 4, 1864, to serve for one year, and was discharged with his regiment, eight days prior to the expiration of his term of service; Held that he is not entitled to the third instalment of bounty not matured. (See first section of the above act, 13 Stat., 379.)—*Vol.* 28, *pp.* 242, 243.

202. The practice of paying matured instalments of bounty to heirs is founded on the phraseology of the law, (act of July 4, 1864,) which speaks of them as payments, not advances.—*Vol.* 30, *p.* 108.

203. The men composing the Mississippi marine brigade were not discharged because the government did not want their services any longer in the sense contemplated by par. 4, General Order 191, 1863; but they were discharged for their own benefit upon the application of their friends and other persons interesting themselves for them; (see Special Orders No. 493, par. 46 of 1864.) They are not, therefore, entitled to the remaining instalment of bounty.—*Vol.* 28, *pp.* 105, 108.

204. When one enlisted as a veteran and afterwards was discharged in order to enlist in the regular army, his claim for the not then matured instalment of the veteran bounty was rejected because he was not discharged for wounds received in the line of duty or because his services were no longer required in consequence of the close of the war, the laws and the regulations not authorizing payments of bounty not matured to veterans otherwise discharged.—*Vol.* 28, *p.* 192.

205. A private enlisted in the signal corps was discharged August 3, 1865, for disability; on the same day, by order of the War Department, all that portion of the signal corps east of the Mississippi was discharged and paid full bounty. It was held that this soldier's discharge having been for disability, and not for reason that "his services were no longer needed," he is not entitled, under the law,

to the bounty not matured, since, under General Orders No. 191, of June 25, 1863, made law by the action of Congress, soldiers discharged on account of disability were not promised bounty except on completion of a certain term of service.—*Vol. 28, p. 277.*

206. Re-enlisted signal men, when discharged because their services are no longer needed, are, under the provisions of General Orders 190, June 25, 1863, and General Orders 66, of February 20, 1864, entitled only to the instalments that matured at the time of their discharge, unless discharged for wounds received in battle.—*Vol. 28, p. 714.*

207. A non-commissioned officer, his regiment having been consolidated, preferred to be mustered out, instead of resuming his former status, as private, and serving out the whole term for which he originally enlisted. Held that the claim for instalments of bounty not matured at the time of his discharge is invalid.—*Vol. 28, p. 699.*

208. A soldier honorably discharged and entitled to regular pay to a given date, is also entitled to such instalments of bounty as matured prior to that date; and a regiment discharged in the field and ordered to a State rendezvous to be paid, is not only entitled to pay to date of final payment at the rendezvous, but also to instalments of bounty maturing within the period covered by pay.—*Vol. 28, p. 715.*

d.—*Under the act of July 28, 1866.*

209. Soldiers who enlisted for three years and were mustered out with their organizations by order of the War Department because the services of the latter were no longer required by the government, are regarded as having served to the close of the war in respect of the additional bounty under the act of July 28, 1866.—*Vol. 30, pp. 116, 117.*

210. The act of July 28, 1866, (14 Stat., 322, 323,) does not apply to enlistments, under the act of July 4, 1864. (See opinion of Attorney General of May 6, 1865, relating to act of July 4, 1864.)—*Vol. 30, pp. 644, 645.*

211. All assignments of bounty before adjudication, are illegal, and any soldier who shall have bartered, sold, assigned, or transferred any interest in the bounty provided by the act of July 28, 1866, (14 Stat., 322, 323, secs. 12, 13, 14, 15, 16,) or any other act of Congress, shall be entitled to no additional bounty whatever, and in every case must swear that he has not so bartered, sold, assigned, or transferred the same.—*Vol. 30, p. 373; vol. 28, p. 29.*

212. The act of July 28, 1866, (14 Stat., 322, sec. 14,) prohibits the payment of the additional bounty in case of the loss of claimant's discharge papers.—*Vol. 29, p. 547.*

NOTE.—The 8th section of the act of March 2, 1867, (14 Stat., 423,) authorizes the accounting officers to receive proof of loss of discharge, and secondary proof of its contents, in lieu of its actual production.

213. Under the act of July 28, 1866, (14 Stat., 322, sec. 12.) provision only is made for additional bounty to enlisted men and their heirs, but drafted men and their substitutes are not entitled to bounty under this act.—*Vol. 29, p. 486; vol. 30, p. 193.*

214. The previous law of March 3, 1863, (12 Stat., 758,) giving bounty to drafted men is not construed *in pari materia* with the act of July 28, 1866, being an independent law, and all the obligations of government arising under it having been fulfilled. And no claim for bounty to a drafted man can be allowed under the latter act.—*Vol. 29, p. 537.*

215. Original bounty is part of the contract of enlistment, and the government has no right to take advantage of its power to deprive the soldier of it by discharging him a few days prior to the completion of his term of service. Additional bounty, however, is a gratuity granted by Congress on certain conditions, outside of any contract, which neither disbursing nor accounting officers have the right to vary, however unequally or unjustly they may seem to operate.—*Vol. 31, p. 38.*

216. Soldiers who enlisted under either of the general orders of the War Department of June 25, 1863, Nos. 190, 191, or the circular of the Provost Marshal General of November 24, 1863, or of the law of July 4, 1864, (13 Stat., 379,) are not entitled to the additional bounty under the act of July 28, 1866.—*Vol. 29, p. 627.*

II.—DESCENT.

a.—Generally.

217. Bounty cannot be devised by will, nor is it a debt due a deceased soldier, but a gratuity to certain surviving heirs. A gave his minor son C, aged six, to B, and, in writing, released all claim to him. B adopted C as his own, and had his name changed by act of legislature. C, still a minor, with consent of B, enlisted. He afterwards gave a power of attorney to D to collect, in the event of his death, the bounty and arrears of pay due, and give to B and his wife. Decedent left a father and one sister—only heirs. Held that the arrears of pay should go to B and his wife, but the bounty to the legal heirs.—*Vol. 25, pp. 179, 180.*

218. And where the decedent leaves neither heirs nor creditors, the government has priority of right to the money.—*Vol. 30, pp. 397, 398.*

219. A soldier dying the same day his discharge was received is entitled to bounty. The accounting officers have a right to elect that he was discharged by reason of death, and not by order of the commanding officer of the post. When soldiers have been discharged the same day both by death and by "orders," all other requisite conditions being fulfilled, the claim for bounty is valid.—*Vol. 25, p. 580.*

220. Certificates for additional bounty to soldiers who have died after making application and before payment will not be paid to the heirs or legal representatives of the deceased payees, without special authority from the accounting officers of the treasury.—*Vol. 30, p. 403.*

221. An administrator of a soldier's widow dying before certificate has issued is entitled to receive the amount of certificate, and the non-reception of the certificate makes no essential change in the rights of parties.—*Vol. 25, p. 549.*

222. The mother of a soldier non-resident of the United States at the time of the decease of her son, but subsequently having removed to this country, is not entitled to receive bounty. Nor would the mother, if resident in this country at the death of her son, have lost her right to the bounty by her removal to a foreign country.—*Vol. 29, p. 187.*

223. A citizen of the United States temporarily residing in Syria, as a missionary, does not forfeit his right to bounty provided by law for the case of his son, deceased in the military service, although the law of July 11, 1862, (12 Stat., 535,) requires the beneficiary to be a resident of the United States.—*Vol. 28, p. 749.*

224. A treasury certificate was made payable to A and B, sisters, the latter of whom died after the application for arrears of pay and bounty had been made, leaving no children, her husband surviving; held that A is not entitled to the whole amount allowed, but that the heir of B is entitled to the moiety due deceased.—*Vol. 30, p. 151.*

225. When the payee of a treasury certificate has died, the pay proper descends according to the *lex loci*. Additional bounty must be paid to the party named in the certificate; the original bounty descends in the order of inheritance prescribed by the laws creating it. But when an heir dies before receiving such original bounty, it becomes a part of his estate, and passes to his legal representatives.—*Vol. 30, pp. 397, 398.*

226. Where a soldier was regularly enlisted, was sound at the time of his enlistment, entered upon duty under his enlistment, and died of disease contracted in the service, his heirs are entitled to the arrears of pay and bounty, notwithstanding he was not mustered.—*Vol. 29, p. 217.*

227. Where the arrears of pay and bounty were claimed by the brother of decedent, himself a soldier, on the ground of a verbal agreement that the survivor, if either should die while in service, should have the back pay and bounty; Held that the arrears of pay might be allowed the surviving brother, but that the bounty, neither by will nor agreement, can be diverted from the course of descent prescribed by statute.—*Vol. 29, p. 11.*

228. A soldier who enlisted September 14, 1863, deceased under circumstances entitling his heirs to bounty; Held that his widow is entitled only to the unpaid balance of \$100 bounty under the act of July 22, 1861.—*Vol. 29, p. 42.* RECEIPTS, 1907.

b.—*Under the act of July 22, 1861. and July 11, 1862.*

229. Under the acts of July 22, 1861, (12 Stat., 269,) and July 11, 1862, (12 Stat., 535,) payment of bounty is made to the heirs in a prescribed order of inheritance, and where the bounty became payable to two brothers, and one of them died without receiving his share, his heirs are entitled to it, and it does not fall to the surviving brother. The right of each to his share attaches and is perfect on the death of the soldier, and the non-existence of preferred relatives. This right is not lost by the failure of either beneficiary to apply for his share, or by the government's failure to pay it before he dies. In case of several heirs, payment may be made to an administrator. And the heirs being a widow and minor children, payment may be made to widow or guardian of minors without letters of administration.—*Vol. 25, pp. 249, 250*

230. When the soldier who is discharged for wounds received in battle dies before receiving the bounty given by act of March 3, 1863, (12 Stat., 758,) the same is not payable to representatives.—*Vol. 26, p. 265.*

NOTE.—The acts of July 22, 1861, (12 Stat., 270, sec. 6,) and July 11, 1862, (12 Stat., 535, sec. 1,) provide for the payment of bounty in a prescribed order of inheritance to the representatives of soldiers dying in the military service. But no such provision is made by the act of March 3, 1863, (12 Stat., 758.)

Amended by act of March 3, 1865, sec. 3, and made payable to heirs in the order of act of July 11, 1862. (See 13 Stat., 487.)

231. To be entitled to bounty under the 5th section of the act of July 22, 1861, (12 Stat., 270,) the heir must have been a resident of the United States at the time of the decease of the soldier.—*Vol. 30, p. 1.*

232. The sisters and only heirs of their brother, who were residents of the United States at the time of his enlistment, but removed to Ireland prior to his decease, are not, under the law of July 11, 1862, (12 Stat., 535,) entitled to bounty. *Vol. 29, p. 121.*

233. The brother and only heir of a soldier dying in service is entitled, under the act of July 22, 1861, to his bounty, and if he dies before receiving it his right to it becomes vested, and it descends to his heirs as a part of his personal property. *Vol. 29, p. 12.*

234. Arrears of pay and bounty cannot be paid to disloyal heirs, nor can such heirs be passed over and payment be made to the next loyal person in the order of inheritance prescribed by the act of July 11, 1862, (12 Stat., 535) *Vol. 29, p. 384.*

235. Where the only heirs of a deceased soldier are grandmother, uncle, and aunt, no bounty is due, since it descends only to the persons named in the statute. See act of July 11, 1862, (12 Stat., 535.) But the arrears of pay follow the rules of inheritance that obtain in the country of the heirs' domicil.—*Vol. 28, p. 206.*

236. The right to bounty under the laws of July 22, 1861, and

July 11, 1862, attaches to, and is vested in, the heir, or heirs, resident of the United States at the time of the soldier's death, and in case there is no resident heir as designated in the law, it reverts to the United States. See, also, acts of July 4, 1864, (13 Stat., 379,) and March 3, 1865, (13 Stat., 487, sec. 3.) Any change of residence after the soldier's death does not affect the right of heirs to bounty.—*Vol. 28, p. 256.*

c.—*Under the acts of July 4, 1864, and July 28, 1866.*

237. A soldier died after an instalment of bounty had become due but before it had been paid, leaving his father as heir, a resident of Germany. Held that the matured instalment of bounty stands on the same footing as pay, and should go to the father as a part of decedent's estate.—*Vol. 28, p. 460.*

238. The bounty of a soldier dying in the service does not descend to his heirs general, resident or non-resident of the United States, but matured instalments of bounty when paid as such stand on the same footing as pay — *Vol. 28, p. 487.*

239. A soldier entitled to additional bounty by the act of July 28, 1866, died without receiving it, leaving a widow and children by a former wife; held that neither is entitled to the bounty, it being a gratuity to the soldier, and not a vested right or part of his estate, and cannot be inherited — *Vol. 30, p. 52.*

NOTE.—Authorized to be paid in such cases, by act of February 21, 1868, to next heir named in law of July 28, 1866.

240. The decision that a check issued to a claimant who dies after making application, becomes part of the estate and is payable on indorsement of the administrator, is applicable to claimants under the bounty act of July 28, 1866, to this extent: that where application has been made by the party entitled, and he has given a valid receipt and a check issued, it is held to be a legal payment for which the government holds a proper voucher. In this case, if the party die before receiving the check, it belongs to his estate. But where a settlement is made and a certificate is issued to the party who dies during the pendency of his claim, it is not to be regarded as paid until the government has a valid receipt, which being now impossible the certificate must return to the office whence it issued.—*Vol. 30, p. 576.*

NOTE.—Modified by act of February 21, 1868, and now the check must be surrendered, and if there be no heir named in the law of July, 28, 1866, the money remains in the treasury.

241. In the case of a widow who, by reason of the death of her husband in the service, was entitled to additional bounty, but died before receiving it, the same cannot be paid to her minor children by such husband, they being beneficiaries only on the condition of her death at the date of the passage of the law; and the bounty not being part of the assets of her estate, neither can it be paid to her administrator.—*Vol. 30, pp. 43, 44.*

242. Nor can it be paid to the heirs or legal representatives of a

soldier deceased after July 28, 1866, whether his death be the result of disease or wounds contracted in the service or not.—*Vol. 30, pp. 43, 44.*

Supra., 240.

243. A soldier entitled to bounty under the act of July 28, 1866, (14 Stat., 322, 323, secs. 12, 13, 14, 15, 16,) made application therefor, but died before its adjudication, and claim was made by the widow. Disallowed on the ground that the bounty was not a part of the soldier's estate, and if not adjudicated could not descend to heirs general, but was a gratuity only to the beneficiaries named in the law.—*Vol. 30, pp. 362, 363.*

Supra., 239.

244. A check for additional bounty was issued in favor of a soldier, who died while his claim was pending. Held, that although the additional bounty under the law of July 28, 1866, is purely a gratuity, and cannot be paid to heirs, yet when the check is issued the money due on it lost this character and became a part of the soldier's estate, to which his heirs are entitled.—*Vol. 30, p. 290.*

Supra., 240 note.

245. The act of July 28, 1866, (14 Stat., 322, 323, secs. 12, 13, 14, 15, 16,) creates no right of inheritance beyond those noted by the law, under which the heirs receive or are entitled to receive original bounty. Hence a mother in a foreign country who is not entitled to receive original bounty can make no claim to additional bounty under the said act of July 28, 1866.—*Vol. 30, p. 518.*

246. The right of inheritance to the additional bounty by the act of July 28, 1866, (14 Stat., 322,) is construed to be vested and determined by the previous laws granting bounty, and includes the heirs only of soldiers who died "in the line of duty," or previous to the passage of the law, excluding the heirs of such as may hereafter die of disease or wounds contracted in the service.—*Vol. 29, p. 626.*

247. When the preferred heir named in the law, and living at the time of its passage, died before payment of the additional bounty, none can inherit, and the bounty lapses to the treasury.—*Ibid.*

NOTE.—But the act of February 21, 1868, allows the heirs named in the act of July 28, 1866, to inherit.

248. The widow of a soldier who died in September, 1866, remarried before February 21, 1867. She claimed bounty under the law of the latter date which authorizes descent of the bounty under the act of July 28, 1866, to widow, minor children, and parents of the soldier, in that order, and to none other. Held that claimant having remarried before the passing of the law of February 21, 1867, she could not claim under it, and bounty was disallowed.—*Vol. 31, p. 446.*

249. A soldier was killed in the service leaving a widow and parents but no child. The widow remarried on the 5th of January, 1865, and the parents applied on the 10th of September, 1868, for the additional bounty under the act of July 28, 1866. Held that as

there was no widow of the soldier at the date of the act of 1866, the next existing heirs named in the law were competent to inherit, and the bounty was, therefore, allowed to the parents.—*Vol.* 31, *p.* 599.

250. Where application for the additional bounty was made by the father and mother of decedent, and before the issue of the certificate a divorce was granted on petition of the mother, held that she is entitled to the bounty under the act of July 28, 1866.—*Vol.* 31, *p.* 423.

251. A widow who obtained \$100 bounty under the law of July 22, 1861, and July 11, 1862, for the services of her deceased husband, and who remarried before July 28, 1866, is not entitled to bounty under the act of the latter date.—*Vol.* 29, *p.* 464.

251a. If there be no minor children of the soldier his parents inherit the additional bounty in preference to his widow who had remarried at the date of the act; but if the remarriage took place after the passage of the act the widow is entitled to it.—*Ibid.*

Supra, 249.

252. The whole bounty of a deceased son, who leaves neither widow nor children, is paid to the mother when the father has abandoned the support of his family, or when a divorce has been obtained against him; and the mother being dead, there being no other heirs, it escheats to the government.—*Vol.* 31, *pp.* 127, 128.

253. And where the soldier died before the passage of the law of July 28, 1866, from cause other than wounds or disease contracted in service, or if he died after its passage from any cause, his heirs are not entitled to the additional bounty; but if he died prior to its passage, of wounds or disease contracted in service, the law provides for its descent to his heirs.—*Vol.* 29, *p.* 484

254. The widow of a deceased soldier, who remarried prior to the passage of the act of July 28, 1866, (14 Stat., 322, sec. 12,) is not entitled to the additional bounty provided by that law, but otherwise if remarried after its passage.—*Vol.* 29, *p.* 484.

III.—REGULARS AND DRAFTED MEN.

255. A soldier enlisting in the regular army on the first day of July, 1861, is entitled to bounty under the fifth section of the act of July 29, 1861, (12 Stat., 279.)—*Vol.* 26, *p.* 289.

256. The act of March 3, 1863, gives to enlisted men discharged from the army of the United States for wounds received in battle, within two years from enlistment, "the same bounty as is granted, or may be granted, to the same classes of persons who are discharged after a service of two years." Is a man who enlisted prior to July 1, 1861, entitled to bounty when discharged after a service of two years? Clearly *not*. The fifth section of the act of July 29, 1861, gives the bounty only to "the men enlisted in the regular forces after

the 1st day of July, 1861;" and a soldier enlisted prior to that time, not being in one of the "classes of persons" entitled to bounty when "discharged after a service of two years," has no legal claim to bounty under the act of March 3, 1863, though discharged by reason of wounds received in battle, as the evident intent of the law is only to substitute such disability for the two years' service in cases where the latter entitled the soldiers to bounty.—*Second Comptroller to Paymaster General, February 17, 1864—Vol. 25, p. 742.*

257. A soldier of the regular army enlisted prior to July 1, 1861, is not entitled to bounty under the act of July 22, 1861, (12 Stat., 268,) but, under the opinion of the Attorney General of September 7, 1866, if he enlisted between the 19th of April and 1st of July, 1861, he is entitled to bounty on the same terms as a volunteer, under the act of July 28, 1866, (14 Stat., 322, 323.)—*Vol. 30, pp. 670, 671.*

NOTE.—The enlistment alone does not give title to bounty.

258. An ordnance sergeant re-enlisted into the regular army July 1, 1862, claimed the bounty offered volunteers by General Orders 191 series 1863, on the ground that the act of July 29, 1861, provides that regulars shall receive the same bounty as volunteers. Held that said order applied exclusively to volunteers; that General Orders No. 190, if any, of the same date covers the case of all recruits enlisting or re-enlisting into the regular army; that under no order is the bounty of \$400 authorized to be paid to recruits enlisting or re-enlisting prior to June 25, 1863.—*Vol. 28, p. 154.*

259. A soldier of the regular army who enlisted prior to July 1, 1861, and was discharged after service of two years for disability, is not entitled to the bounty provided by section 5, act of July 22, 1861, (12 Stat., 270,) as the benefits of that law were made applicable by the law of July 29, 1861, only to soldiers of the regular army enlisting after July 1, 1861.—*Vol. 28, p. 52.*

260. Where a hospital steward enlisted for five years in the regular army and was discharged after serving less than two years in consequence of his services being no longer required, held that he was only entitled to the instalments of bounty that had matured at the date of his discharge. (See General Orders 190, 1863.)—*Vol. 28, p. 242.*

261. The men of the signal corps are regarded as a part of the regular army, and as such are not entitled to the veteran bounty, that being a gratuity provided for volunteers only. (See General Orders No. 191, June 25, 1863.)—*Vol. 28, p. 714.*

262. Substitutes who entered the service between July 18, 1864, and September 5, 1864, as representative recruits of those not liable to draft, are entitled to the same bounty as volunteers; but when put into the service by men liable to the draft of September 5, for the purpose of exempting themselves, no bounty is due. And all substitutes for men actually drafted between July 18, 1864, and September 5, 1864, are entitled to the \$100 bounty, because they

must have been drafted under the call of March 14, 1864.—*Vol.* 28, *p.* 145.

263. Men drafted for one year only or their substitutes are not entitled to bounty.—*Vol.* 28, *p.* 480. *SUBSTITUTE*, 1957, 1960.

IV.—TRANSFERRED FROM ARMY TO NAVY.

264. Soldiers transferred to the navy do not lose their right to bounty under the act of July 22, 1861, (12 Stat., 270,) if they served two years, but it must be paid out of the navy funds. But additional bounty is on a different basis, being a gratuity to soldiers only and not including seamen, who receive bounty from the navy appropriations.—*Vol.* 30, *p.* 118.

NOTE.—The 20th of August, 1866, was recognized as the close of the rebellion by the second section of the act of March 2, 1867, (14 Stat., 422.)

265. A soldier transferred from the army to the navy is not entitled to bounty under the law of July 28, 1866.—*Vol.* 29, *p.* 577.

266. Under the 7th section of the act of February 24, 1864, (13 Stat., 7,) all persons transferred from the army to the navy, and who have been discharged from the service on completion of their term, or for wounds received in the line of duty, are entitled to bounty. On application to the Fourth Auditor payment will be made of such sums as the official records show to be due; provided that such sums of bounty as they may be entitled to by law, in consequence of their enlistment in the army and transfer to the navy, be deducted from any prize money to which they may have become entitled, or that may have been paid to them during their service in the navy within the period covered by their enlistment in the army.—*Vol.* 28, *p.* 101.

NOTE.—By act of April 6, 1866, (14 Stat., 14) the requirement to deduct the bounty from prize money is repealed.

267. When applications are presented for arrears of bounty due persons transferred from the army to the navy, their claims first having undergone examination by the Second Auditor, and bearing his certificate as to the amounts due, as shown by the rolls at the time of transfer, will be transmitted to the Fourth Auditor for his action and payment under the law, February 24, 1864, (13 Stat., 27,) and the decision of the Secretary of the Navy.—*Vol.* 28, *p.* 119.

268. Persons enlisting into the military service, but subsequently transferred to the naval service and discharged from the latter, are not entitled to the bounty provided by the act of July 28, 1866.—*Vol.* 31, *p.* 406.

V.—MARINE CORPS AND NAVY.

269. A private enlisted in the marine corps, June 17, 1861, and was discharged in consequence of a gunshot wound received at the battle of Bull Run, July 21, same year. Held that under the law of

March 3, 1863, (12 Stat., 758,) amending the law of July 22, 1861, (12 Stat., 270, sec. 5,) he is not entitled to bounty.—*Vol. 25, p. 86.*

270. Bounties are not authorized to marines on enlisting. Acts July 5, 1838, (5 Stat., 260, sec. 29;) August 4, 1854, (10 Stat., 575, sec. 1 and 2;) August 5, 1854, (10 Stat., 586;) July 22, 1861, (12 Stat., 270;) July 29, 1861, (12 Stat., 281;) August 3, 1861, (12 Stat. 288, sec. 9;) and sec. 10, repealed by act of July 17, 1862, (12 Stat., 595, sec. 10;) July 11, 1862, (12 Stat., 535;) March 3, 1863, (12 Stat., 758.)

NOTE.—These provisions of the laws by the act of August 5, 1854, (10 Stat., 586,) apply to the marine corps in respect of pay; and by the act of July 1, 1864, sec. 4, (13 Stat., 342,) “persons hereafter enlisted into the naval service or marine corps during the present war shall be entitled to receive the same bounty as if enlisted in the army.”—*Vol. 25, pp. 246–248, 312–313.*

271. No bounty was authorized for enlistment in the marine corps until the passage of the act of July 1, 1864, (13 Stat., 342, sec. 4.) The promise made, through mistake, by the Navy Department, June 7, 1862, of \$100 bounty for two years’ service in the marine corps was withdrawn July 10, 1863. To keep faith with those who enlisted between those dates, the promised bounty was paid.—*Vol. 30, p. 181.*

272. Bounty is not authorized by law for enlistment into the marine corps prior to July 1, 1864, although through misapprehension a bounty of \$100 to men enlisted from June 7, 1862, to July 10, 1863, was authorized by the Navy Department.—*Vol. 29, p. 255.*

273. Under the act of July 1, 1864, bounty is payable to enlisted men of the marine corps; but through misapprehension of the laws regulating bounty, the Navy Department, on the 7th of June, 1862, promised \$100 for two years’ service to men enlisting between this date and July 10, 1863. The President having approved the action of the department, on the ground that good faith should be kept with the employés of the government, the bounty in such cases will be allowed.—*Vol. 28, pp. 159, 160.*

274. Prior to the passage of the act of July 1, 1864, (13 Stat., 342,) bounties were not offered or paid to persons enlisting in the navy or marine corps, but by the 4th section of that act enlisted men in the navy or marine corps “during the present war” are entitled to receive the same bounty as if enlisted in the army. By order of the Secretary of the Navy, in misapprehension of the law, \$100 bounty was offered and paid to recruits enlisting in the marine corps between June 7, 1862, and July 10, 1863.—*Vol. 28, p. 195.*

275. No provision is made by law for the payment of bounty to persons enlisting in the naval service prior to the act of July 1, 1864, and claims, therefor, even if the recruit enlisted on the supposition that he was to receive bounty, cannot be paid.—*Vol. 28, p. 778.*

276. A sailor taken prisoner on board the rebel ram *Tennessee*,

and afterwards having enlisted in the United States navy, claimed the matured instalments of bounty; but it was held that, in the absence of special laws granting bounty in such cases, the practice of the War Department, in denying bounty or travel pay to men enlisted from rebel prisoners of war into the army, should be observed.—*Vol. 28, p. 290.*

VI.—FOR WOUNDS IN BATTLE.

277. A volunteer recruit attached to an old regiment, discharged within two years for wounds received in battle, is entitled to retain such portion of bounty as he has received, and to be paid \$75, remainder of bounty due under the act of July 22, 1861, (12 Stat., 270.)—*Vol. 26, p. 222.*

278. Veteran volunteers discharged within two years for wounds received in battle are entitled to \$75 remainder of bounty due under the act of July 22, 1861, (12 Stat., 270,) and what they have received of the \$300 commutation bounty.—*Vol. 26, p. 222.*

NOTE.—But by the act of 3d March, 1865, (13 Stat., *p.* 487,) the whole bounty is given.

279. The case of a soldier wounded whilst on picket duty is not covered by the law of March 3, 1863, (12 Stat., 758,) granting bounty to soldiers discharged by reason of wounds received in battle, unless the wound was received during an engagement with the enemy in which he participated of the danger.—*Vol. 26, p. 193.*

NOTE.—But by the act of 3d March, 1865, bounty is allowed in such cases. (13 Stat., 487.)

280. To entitle to bounty given by act of March 3, 1865, (13 Stat., 487,) in case of discharge before completion of two years' service, the discharge must be for wounds received in battle. Act March 3, 1863, (12 Stat., 743.)—*Vol. 26, p. 126.*

281. A soldier thrown from his horse in battle, and fracturing his leg, so as to cause his discharge before he has served two years, is within both the language and the equity of the law of March 3, 1863, (12 Stat., 743,) and is entitled to the \$100 bounty.—*Vol. 26, pp. 162, 240.*

282. To entitle a soldier to bounty under the 4th section of the act of March 3, 1865, (13 Stat., 488,) the wound causing his discharge must have been such as necessarily grew out of the performance of duty peculiar to a soldier, and not such as is equally incident to civil life. And where wounds were caused by the falling of timber in bridge building, by the kick of a vicious horse, though incurred in the army; held that claimant was not included in the provisions of the law. But when the wound was occasioned in some one of the numerous ways incident and confined to a battle in actual progress, picket firing, skirmishing, or guerilla warfare, or other active operations endangering life in a manner peculiar to war, the law was held to apply.—*Vol. 28, p. 176.*

NOTE.—Modified by joint resolution of April 12, 1866, (14 Stat., 352,) to include soldiers discharged by reason of wounds received while actually in service under military orders, etc.

283. Bounty will not be paid to a soldier discharged by reason of injuries or wounds accidentally received while performing the ordinary duties of camp life and not the result of active operations or hostilities against the enemy.—*Vol. 28, p. 26.*

NOTE.—Refer to paragraph in which joint resolution of April 12, 1866, is quoted.

284. The heirs of soldiers who enlisted for a period of service less than six months, who have died from disease contracted in the service, have not been allowed bounty provided by act of July 22, 1861, (12 Stat., 268,) that act having specified six months as the shortest enlistment under which bounty in such cases can be claimed.—*Vol. 28, p. 177.*

285. A soldier while acting as guard attempted to arrest a squad of drunken men, was wounded, and discharged in consequence. Held that his claim for bounty did not come within the act of March 3, 1865, (13 Stat., 488, sec. 4.) The casualty was not one springing from his duty as a soldier, nor peculiar to military service, but would have been as likely to occur to a citizen or a police officer.—*Vol. 28, p. 312.*

NOTE.—Modified by joint resolution of April 12, 1866.

286. In order to entitle a soldier when discharged for wounds, to the whole of his bounty, as if he had served out his full term, as provided by section 4, act of March 3, 1865, (13 Stat., 488,) the wound or wounds for which he was discharged must have been received during the term of enlistment under which he was serving when discharged.—*Vol. 28, p. 318.*

287. A discharge for pre-existing disability, or for a wound received in service under a previous enlistment, does not bring the soldier within the intent of the law allowing full bounty.—*Vol. 28, p. 318.*

288. A soldier discharged the service before the expiration of two years from the date of his enlistment, in consequence of the loss of sight in his right eye from exposure while in the service, is not entitled to bounty as for wounds.—*Vol. 31, p. 396.*

289. Where a person presented himself to the provost marshal and surgeon for examination and transportation to Washington in order to enlist in Hancock's corps, agreeably to circular of War Department, No. 86, of December 1, 1864, and having been provided with transportation by the government, was injured by a railroad accident without fault on his part while *en route*, held that under the law and the regulation, not being in the military service of the United States, either by enlistment or muster, at the time he received the injury, he is not entitled either to pay or bounty.—*Vol. 31, pp. 379, 380.*

290. A soldier who has served two years, and been discharged on

account of wounds received in the line of duty, and paid \$100 bounty by reason of such service, cannot claim \$100 by reason of the wounds. The act of March 3, 1863, did not add to the bounty provided by the act of July 22, 1861, but simply provided that a discharge for wounds should have the same effect on his title to bounty as a discharge after two years' service.—*Vol. 28, p. 159.*

VII.—DISCHARGED FOR PROMOTION.

291. A soldier discharged before the term of enlistment expires, not having served two years, in order to be promoted, is not entitled to bounty nor travel pay.—*Vol. 25, pp. 476-478.*

292. Under the act of July 22, 1861, (12 Stat., 270, sec. 5,) as construed by the Secretary of War, (12 Stat., 270,) the bounty of \$100 is allowed privates discharged for promotion after two years' service; but not if promoted before the expiration of that time.—*Vol. 25, p. 409.*

293. The practice is founded in equity, that when an abled-bodied soldier is discharged previous to the expiration of his term of enlistment, to accept a commission or situation with higher pay, he is not entitled to bounty which it is the object of the law to bestow upon those who serve out their terms, and to those who may be 'previously discharged by reason of disability, or to designated relations of those who may die.—*Vol. 25, p. 241.*

294. Enlisted men promoted to the rank of commissioned officers before the expiration of two years' service, are not entitled to bounty.—*Vol. 24, pp. 634, 635.*

295. Soldiers who have been discharged, after two years of service, for promotion, are not entitled to the additional bounty provided by the act of July 28, 1866, (14 Stat., 322, 323, secs. 13, 14, 15, 16.)—*Vol. 30, p. 71.*

296. In the case of an enlisted man entitled to the veteran bounty, or to the increased bounty of \$300, but who is discharged before the expiration of the term of his enlistment, by reason of promotion, he is entitled to the instalments of bounty matured and become payable before the date of his discharge, less \$25, by law required to be refunded.—*Vol. 28, p. 693.*

VIII.—ADVANCES, DEDUCTIONS, AND REPAYMENTS.

297. The \$25 advanced under the act of July 22, 1861, (12 Stat., 270,) for two years' service, are to be deducted from the arrears of a discharged soldier, when his discharge is not occasioned by wounds received in battle or sickness contracted while in the service.—*Vol. 26, p. 167.*

298. And the 6th section of the act of July 5, 1862, (12 Stat., 509,) having authorized payment of \$25 of the \$100 bounty in advance to all volunteers—(General Orders, War Department, Nos. 190, 191,

series 1863, modified by orders 305 and 324, 1863,) having authorized payment of bounties in advance and by instalments—and the act of July 4, 1864, having also provided for payment in advance and by instalments, it will, in all cases, be assumed that such advance payment has been made, and it will accordingly be deducted, unless satisfactory evidence of non-payment be adduced.—*Vol. 28, p. 101.*

299. NOTE.—The bounties authorized under the laws and orders above alluded to are as follows: volunteers who enlisted prior to December 24, 1863, for not less than two years, (except veteran volunteers and recruits for old organizations,) and from April 1, 1864, to July 18, 1864, \$100; (act of July 22, 1861.) Veteran volunteers who enlisted prior to April 1, 1864, \$400; (see General Orders, 191, 216, 305, 324 and 387 of 1863, and joint resolutions of January 13, and March 3, 1864.) Recruits for old organizations who enlisted for three years from October 24, 1863, to April 1, 1864, \$300; (see Provost Marshal's circulars of October 24, and November 3, 1863, and joint resolutions of March 3, 1864.) Recruits for new organizations who enlisted for three years from December 24, 1863, to April 1, 1864, \$300; (see Adjutant General's letter to commander of department of Washington of December 24, 1864, and joint resolution of March 3, 1864.) Volunteers for one, two, and three years, who enlisted from July 18, 1864, to April 30, 1865, \$100, \$200, and \$300, respectively; (see act of July 4, 1864, and Paymaster General's circular, No. 35, of 1865.)

300. Where enlisted men are discharged from service before the terms of their enlistment have expired, deductions from, or repayments of, bounty in consideration of such discharge are authorized by law, and the evidence required to show that such deductions from bounty have been made, is the rolls of the company in the army, and of the ship's crew in the navy. See the following laws on the subject: Acts of March 3, 1863, (12 Stat., 743, sec. 6,) February 24, 1864, (13 Stat., 7, sec. 7,) July 4, 1864, (13 Stat. 380, sec. 5,) and joint resolution, February 24, 1864, (13 Stat., 403, sec. 2.)—*Vol. 28, p. 194.*

301. A soldier by "neglect of duty" lost a horse, carbine, pistol, &c., the property of the United States, and the paymaster, in settling his account, deducted the excess of these charges over the arrears of pay from the local bounty credited in his check book. An appeal to the War Department having been made by the soldier, the matter was referred to the Second Comptroller who held that the disbursing officer was justified in withholding the value of the articles from any money of the soldier in his hands until the government be indemnified for the loss sustained.—*Vol. 28, p. 205.*

302. When the heirs of a deceased private were entitled to bounty under the act of July 22, 1861, (12 Stat., 270, sec. 6,) and the deceased was indebted to the United States for cavalry equipments, held, that over-payments of money or advances of property made to the soldier while in the service should be deducted from the

bounty. The same rule holds in the case of discharged soldiers. Bounty, as well as pay and allowances prescribed by law, are embraced in the contract between the government and soldier, and may be properly regarded as one subject to the usages and contingencies of the military establishment.—*Vol. 25, pp. 177, 178.*

NOTE.—See Decisions of Comptroller, March 21, 1853, and September 25, 1856; Opinions Attorneys General, vol. 4, p. 70; vol. 3, p. 35.—*Vol. 25, pp. 177, 178.*

303. The bounty under former laws has been held to be subject to deduction of any balance due from the soldier, and there is nothing in the laws of July 22, 1861, (12 Stat., 270,) and July 11, 1862, (12 Stat., 535,) to justify a change of practice.—*Vol. 25, p. 762.*

304. Persons not drafted, who furnished substitutes, and those who furnished "representative recruits," are not entitled to have the cost of such substitute or representative recruit returned under the act of February 24, 1864, (13 Stat., 6)—*Vol. 30, pp. 254, 255.*

305. Local bounty paid to recruits for enlistment, and deposited with the United States mustering officer, cannot be refunded to them when discharged from service in consequence of minority; nor will such bounty be returned to the local authorities when credit for the enlistments has been given upon their quota.—*Vol. 29, p. 308.*

306. But if by reason of their discharge the local authorities failed to receive the credit for which the bounty was paid, and were called upon to furnish other recruits in their stead, the money belongs to the authorities and will be returned to the town or locality interested.—*Ibid.*

307. A private soldier who had served the term of his enlistment and was honorably discharged, claimed payment of \$300 bounty stolen from the provost marshal's safe. The local authorities, by virtue of General Orders No. 305, of December 27, 1864, paid over the bounty to the United States officer, and the deposit was made without consulting the soldier. Held that as the government by its regulations and its request became a depository, and holder in trust of the bounty for the soldier's benefit, it assumed the obligation to deliver the bailment to him.—*Vol. 29, p. 88.*

308. An enlisted soldier who, on his arrival at rendezvous, was rejected by the post surgeon, cannot be regarded as properly in the military service, although he may have been discharged under order No. 77, of April 28, 1865, directing the immediate discharge of all recruits in rendezvous, except those of Hancock's corps and the regular army. Payment of the advance bounty to which, by law, every accepted recruit was entitled, was refused; and his claim for refundment of the local bounty, deposited by him with the paymaster, rejected, on the ground that a man obtaining bounty under a contract of enlistment, which he is either unable or unwilling to fulfil, obtains it fraudulently and is not entitled to retain it. If paid by the United States it rightfully belongs to the general government; if by the local authorities, they alone rightfully may claim it, unless they were,

by the fraudulent enlistment, credited with a recruit on account of the quota of troops required to be furnished by them, in which case even local bounty justly belongs to the United States, since they incur the expense of supporting the recruits while nominally attached to the army, and lose the benefit of services which the local authorities were bound to furnish, and from which they had been exonerated by the fraudulent enlistment of an invalid or incompetent recruit.—*Vol. 28, p. 663.*

309. A drafted man made application for the return of \$300 commutation money, on the ground that he was not liable to draft on account of physical defects, though passed by the surgeon. Held that the accounting officers cannot review and reverse the findings of official experts acting within the scope of their duty, who had examined him and pronounced him fit for a soldier.—*Vol. 30, p. 273.*

310. The time within which claims for return of commutation money may be presented and considered under the 1st section of the act of February 28, 1867, (14 Stat., 417,) for the relief of certain drafted men, is unlimited. The proviso of the 2d section that this section shall apply only to claims received at the War Department prior to its passage relates to the 2d section only.

The money intended to be refunded by the act not being a gratuity, but a return of what was improperly taken, may be paid to heirs and legal representatives.—*Vol. 30, pp. 254, 255.*

IX.—EVIDENCE.

311. Where resident heirs of a deceased soldier claim bounty, and it appears that there were other heirs, non-residents of the United States, it was held that, if the evidence be not clear and satisfactory, the bounty will be refused until testimony, taken in foreign countries, shall be received corroborating that adduced in the claim for bounty. When proof is positive and indubitable, payment of bounty may be made to resident heirs without requiring application for arrears of pay from non-residents.—*Vol. 25, pp. 225, 238, 525, 564.*

312. Where there are foreign heirs entitled to the arrears of pay the bounty will not be paid to the resident heirs until the evidence of European genealogical tables has been adduced, in the papers applying for arrears of pay.—*Vol. 29, p. 211.*

313. In case of application for bounty by "only brothers and sisters," or widows, of foreign nativity, evidence drawn from genealogical tables in Europe is required.—*Vol. 29, p. 11.*

314. Where an aunt claims bounty as only heir of deceased soldier, proof should be required of death of nearer relatives.—*Vol. 24, p. 519.*

NOTE.—Similar claims accruing after July 11, 1862, are barred by the act of that date, (12 Stat., 535.)

315. In case of doubt as to the adjustment of naval bounty named in prize lists, owing to the absence of dates, the pay rolls of the ves-

sels on which the claimants served will be referred to. The date of enlistment or transfer from the army being thus found, the amount of bounty to which claimants were entitled under the laws existing at the time of enlistment or transfer can be determined.—*Vol. 28, p. 318.*

316. In all cases where the amount of bounty placed on the list, is required by law to be deducted from prize money, it is held, in the absence of positive evidence to the contrary, that the amount of advance and accrued instalments have been paid.—*Vol. 28, p. 318.*

317. As to bounty, the law gives no title to it except upon an honorable discharge. The discharge being silent, the fact whether it be honorable or not must be determined by the evidence in the case. When it appears that a soldier has committed the most dishonorable military offence known to the army, his discharge is not held to be honorable, nor the claim for bounty legal.—*Vol. 28, pp. 570, 571.*

318. An honorable discharge is a condition precedent to the payment of bounty; but when the discharge papers are silent on this point, then the question is one of fact to be determined by the claimant's military history.—*Vol. 28, p. 680.*

X.—WITHHELD ON ACCOUNT OF CRIMINALTY.

319. If habitual drunkenness on the part of the father, and consequent neglect to provide for the support of the family, be proven by responsible witnesses, the bounty will be awarded the mother.—*Vol. 25, p. 432.*

320. When a soldier's contract of enlistment has been terminated by death, directly resulting from criminality on his part, no just claim exists for payment of bounty to his heirs.—*Vol. 26, p. 45.*

321. When the wife of a soldier, by notorious and proved adultery, has dissolved their marriage relation so far as she could do it, she has no title, under the acts of July 22, 1861, (12 Stat., 270,) and July 11, 1862, (12 Stat., 535,) to the \$100 bounty, even if a legal decree of divorce has not been pronounced.—*Vol. 26, p. 231.*

322. A woman who had abandoned her husband, married a second time, and lived in a state of adultery after committing bigamy, is not entitled to the bounty provided by the act of July 22, 1861, (12 Stat., 270,) and July 11, 1862, (12 Stat., 535,) for the services of her husband dying as a soldier.—*Vol. 25, pp. 340, 341.*

323. A soldier convicted of crime and sentenced to the penitentiary, but, before the expiration of his term of imprisonment, released and discharged by order of the Secretary of War, with loss of all pay and allowances, in lieu of serving out the unexpired portion of his sentence, is not entitled to bounty.—*Vol. 28, p. 734.*

324. Bounty is made dependent by law on an honorable discharge, and while in prison this man was a convict rather than a soldier, and his discharge being coupled with conditions as to pay, &c., he must abide by his election.—*Vol. 28, p. 734.*

325. In computing the instalments of bounty due a soldier who has been guilty of absence without leave, the entire period of absence

should not be counted, but wholly ignored. When he returns the time to be computed for his bounty begins anew.—*Vol. 29, p. 125.*

326. A soldier convicted of deserting his post, as well as of drunkenness on duty, and sentenced to confinement at hard labor for two years, is not regarded as having received a discharge honorable in the sense of the law granting bounty.—*Vol. 29, p. 332.*

327. A soldier absent from his regiment without authority, for a period of three months, though voluntarily returning to it, whether tried and convicted or not, is guilty of desertion, and forfeits the bounty.—*Vol. 28, p. 92.*

328. A soldier captured by the enemy while absent without leave, forfeits all pay, allowances, and instalments of bounty while absent.—*Vol. 28, p. 273.* DESERTER, II, 690-708; III, 713.

BOUNTY FOR ENLISTMENT.

AT REMOTE AND DISTANT STATIONS.

329. A soldier enlisted on the first day of January, 1861, in the regular army, for the term of five years; his service was subsequently limited to three years, by the act of July 29, 1861, (12 Stat., 281, sec. 5,) and he was discharged within two months of the expiration of his term of service in order to enter the volunteers. Held that under the law of June 17, 1850, (9 Stat., 438,) he is only entitled to *pro rata* bounty for enlistment at remote and distant stations. See also General Orders of the War Department, June 22, 1850.—*Vol. 25, pp. 574-576.*

330. When a soldier's contract of enlistment, under third section act of June 17, 1850, (9 Stat., 438,) is terminated before the expiration of his full term, by a discharge, not in consequence of any fault on his part, he is entitled to a *pro rata* allowance of bounty for the time he actually served, according to the scale prescribed in General Orders, War Department, No. 20, June 22, 1850.—*Vol. 18, p. 176.*

331. Enlisted men of ordnance are decided to be "soldiers," and to be entitled to the benefit of the second and third sections of the act of August 4, 1854, (10 Stat., 575.) Decision of Secretary of War, November, 23, 1854. Any soldier entitled, on the 2d of August, 1861, to bounty for re-enlistment at a remote and distant station under the law of June 17, 1850, (9 Stat., 438,) did not lose his right to that bounty by the enactment of the law of August 3, 1861, (12 Stat., 288, sec. 9,) abolishing such bounty.—*Vol. 25, pp. 550, 551.*

332. The whole bounty, under the third section of the act of June 17, 1850, (9 Stat., 438,) can only be paid if the soldier serves out his term; not if he is discharged for sickness, or dies prior to the expiration of his enlistment.—Act of June 17, 1850, (9 Stat., 438,) sec. 3, and General Orders, June 22, 1850.—*Vol. 16, pp. 169-171.*

333. Bounty for frontier enlistment under the act of June 17, 1850, (9 Stat., 438,) is to original enlistment of recruits. A soldier who re-enlists is not entitled to both extra pay and bounty provided by the acts of July 5, 1838, (5 Stat., 256,) and June 17, 1850, (9 Stat., 438,) but he may re-enlist under the provisions of either the one or the other.—*Vol. 16, pp. 400-403.*

334. Under the act of June 17, 1850, (9 Stat., 438,) granting bounty for enlistment on remote and distant stations, a soldier having served less than a year at the time of his discharge is not entitled to any bounty for the time he actually served.—*Vol. 19, p. 470.*

335. A private enlisted under the provisions of the second section of the act of August 4, 1854, which provides an addition of monthly pay for successive periods of five years service, so long as the soldier shall remain continuously in the army. Held that his discharge after serving less than the whole period was a bar to any claim for the increase of pay under the law of August 4, and that he could not reinstate himself by re-enlisting during the period for which originally he had re-enlisted, and from which he had obtained a discharge; held further that his service in the War Department on detail was not in fact, but only constructively, in the army.—*Vol. 28, p. 187.*

CAMP AND GARRISON EQUIPAGE.

336. Knapsacks and haversacks are frequently returned as effects of deceased soldiers. They belong, however, to camp and garrison equipage, and the soldier has no property in them, or pecuniary responsibility for them, unless they be lost, destroyed, or damaged through his neglect or fault.—*Vol. 27, p. 167.*

CAPTURE.

337. A steamer, left by the owner in the hands of an agent at New Orleans, by whom she was sold on the breaking out of the rebellion, to the enemy, was subsequently recaptured by the loyal forces and turned over to the quartermasters' department. On the application of the owner, and the establishment of his loyalty, the vessel was restored, he not being held by the dishonest act of his agent. In a claim for the services of the vessel while employed by the quartermasters' department, held that he could recover only from the date when he had made his claim of ownership.—*Vol. 30, pp. 100-103.*

338. A steamer in the service of the government captured by the rebels without the fault of the owners, was ransomed by the payment of a certain sum, for the reimbursement of which claim was made. Held that there is no law under which the accounting officers can take cognizance of such a claim, and that Congress only can afford relief.—*Vol. 31, p. 20.*

339. Claim was made for loss of wagon, team, and harness, captured by the enemy in Arkansas, while in the service of the United States by *contract*, the owner not having agreed to incur the risk. Held that as this claim does not rest on the act of July 4, 1864, (13 Stat., 381,) is not affected by the act of February 21, 1867, (14 Stat., 397,) it may be allowed under the act of March 3, 1849.—*Vol. 30, pp. 208, 209. PROPERTY LOST, 1749, 1750; CONTRACT, V, 578; PROPERTY, II, 1752, 1753.*

CHAPLAINS.

340. With the eligibility or qualification of chaplains under the law of July 17, 1862, (12 Stat., 595, sec. 9,) or any other law, the accounting officers have nothing to do. The War Department alone has jurisdiction of the question, and when a chaplain has been appointed by competent authority, and is borne upon the muster-rolls, it is the duty of the paymaster to pay him until he is mustered out. No provision is made for pay and rations of chaplains when off duty.

NOTE.—The 9th section of the act of July 17, 1862, (12 Stat., 595,) is modified by act of April 9, 1864, (13 Stat., 46,) granting to chaplains, absent with leave, the pay and allowances of other officers in the military service.—*Vol. 25, pp. 264, 401, 633.*

341. The pay and allowances of all chaplains, regular and volunteer, are \$100 per month and two rations per day when on duty. Act of July 17, 1862, sec. 9, (12 Stat., 595.)—*Vol. 25, p. 633.*

NOTE.—See act of April 9, 1864, (13 Stat., 46,) modifying the law of July 17, 1862.

The act of April 9, 1864, (13 Stat., 46,) recognizes chaplains as officers, and gives them rank on the field and staff rolls next after surgeons. They are also entitled to pensions upon the same conditions as other officers, under the law of July 14, 1862, (12 Stat., 566.) They are, therefore, clearly entitled to travel-pay, &c, like other officers, upon an honorable discharge.

342. Chaplains are entitled to the extra pay allowed by Congress, by act of September 28, 1850, (9 Stat., 504, sec. 1,) for service in California and Fort Laramie. Act of March 3, 1855, (10 Stat., 639, secs. 5 and 6.)—*Vol. 19, pp. 72, 73.*

343. The rank of chaplain, as fixed by the act of March 2, 1867, (14 Stat., 423,) is that of captain of infantry; and on retirement he is entitled to the pay proper of that rank and four rations per day.—*Vol. 30, p. 625.*

344. And if a fixed salary has been given by law to any military employé of the government while on active duty, and a defined military rank, either actual or assimilated, has also been conferred upon him by law, his rank and not his salary will control his pay on retirement.—*Vol. 30, p. 625.*

345. That portion of the 1st section of the act of April 9, 1864,

(13 Stat., 46,) amending section 9, act of July 17, 1862, (12 Stat., 595,) is retroactive in its application, and chaplains who have been absent from duty by reason of wounds or sickness, or when held as prisoners of war in the hands of the enemy, are entitled to full pay without rations during such absence.—*Vol.* 26, *p.* 126.

346. A chaplain tried and acquitted, or discharged without trial, is entitled to pay and allowances while under arrest. A chaplain sick in hospital by reason of wounds received or sickness incurred while in the line of his duty is entitled to pay and allowances. The law of July 17, 1862, (12 Stat., 595, sec. 9,) excludes chaplains from pay, &c., when not on duty, but the rule of interpretation, that a statute shall be construed so as to work no manifest absurdity and injustice, applies.

NOTE.—From July 22, 1861, up to July 17, 1862, chaplains received the pay and emolument of a captain of cavalry; thence to April 9, 1864, \$100 per month, two rations per day when on duty; thence same pay, &c., and forage for two horses, and pay as other officers when off duty. See act of April 9, 1864, (13 Stat., 46.)—*Vol.* 25, *p.* 550.

347. Under sec. 1, act of April 9, 1864, (13 Stat., 46,) and sec. 7, act of March 2, 1867, (14 Stat., 423,) chaplains are entitled to fuel and quarters in kind, but not to commutation therefor.—*Vol.* 30, *p.* 350.

348. A chaplain is an officer and cannot be paid the three months' extra pay, unless the War Department decides that he was discharged because his services were no longer required, in consequence of the close of the war, or honorably discharged after April 9, 1865. (See act of July 13, 1866, 14 Stat., 94.)—*Vol.* 28, *p.* 157. *QUARTERS AND FUEL, I, 1801; TRAVEL PAY, I, 2090.*

CHARTER-PARTY.

SEE *Demurrage—Freight—General Average—Salvage.*

349. The contract of affreightment in a charter-party is an entire contract; unless fully performed by the delivery of the whole cargo, no freight can be legally claimed. The delivery of the whole cargo is a condition precedent to the recovery of freight.—*Vol.* 11, *p.* 250.

350. Where a charter-party is executed with an officer of the quartermasters' department no claim for damages by the ship-owner can be entertained or paid by that department, except such as arises from the act of the officers of that department, or a breach on their part of some stipulation of the contract.—*Vol.* 15, *p.* 204.

351. When a vessel is unseaworthy when chartered, the owners have no legal claim for any charter money, it being an implied engagement on their part that she was, at the time of chartering, and should be kept during the charter, in a seaworthy condition.—*Vol.* 12, *pp.* 56, 57.

352. If a ship be chartered at a specific sum for the voyage, and she loses a part of her cargo by a peril of the sea, and conveys the residue, no freight can be claimed under the charter-party.—*Vol. 13, p. 189.*

353. One charter-party may be terminated and a new one made by the executors. And the receipt of the executors, or of their duly constituted attorney, is a valid and sufficient voucher for payments made on account of the charter-party.—*Vol. 25, p. 307.*

354. A steamboat under charter-party of affreightment to proceed direct to such ports, &c., as ordered by United States quartermaster, having completed two-thirds of the voyage, was compelled by stress of weather to return to port for repairs. Held that there was no deviation from the voyage. And when the same vessel sought a port out of the usual course in order to save cargo and ship; Held there was no deviation. But when the steamer lay at anchor four days, and no reason assigned, it was held to be a deviation — *Vol. 25, pp. 507-509.*

355. A charter-party of affreightment, dated at New York, stipulates that the vessel shall proceed direct to such ports and places as ordered by the United States quartermaster, but is silent as to the place of return. After delivery of the cargo at Alexandria the master was ordered by the quartermaster to proceed to New York, instead of which he sailed for Baltimore. The owners claim per diem allowance under the charter-party for the estimated time in making the voyage from Alexandria to New York. Held that the actual return of the vessel to the port of departure, according to proper orders, would alone entitle to compensation as claimed; and that in no event were the owners entitled to pay for more time than was occupied in sailing from Alexandria to Baltimore.—*Vol. 25, p. 547.*

356. The steamship *Mississippi*, under charter-party of affreightment with the United States, was stranded on Fryingpan shoals, and a portion of the cargo jettisoned, and detention ensued to save vessel and troops on board, and make repairs. Held that the time lost by deviation and detention for making repairs are elements of computation in determining the amount to be paid to owners; and that from the amount of the charter-party for the whole period should be deducted the loss by jettison and the per diem allowance for the time consumed in detention and making repairs, the expense of services of United States vessels rendering aid, and the freight on provisions furnished by the United States, and that from the remainder thus found an amount should be taken equal to the interest on payments for hire of steamer, as if such payments had been made according to the terms of the charter-party.

NOTE.—In the final opinion given in this case the question of general average contribution was not raised, and the question of loss by "peril of the sea" reserved.—*Vol. 25, pp. 137, 144, 321, 322.*

357. Where a vessel under the control of a pilot hired by the United States was stranded, and both vessel and cargo lost, it was

held to be a peril of the sea, and the per diem allowance stipulated in the charter-party, justly due the owners of the vessel.—*Vol. 26, pp. 65–67.*

358. Where the marine risk was assumed by the owner in the charter-party, and the vessel was injured by an explosion of gunpowder, and fire was the cause of the explosion, the damages were regarded as coming within the marine risk. *Vol. 29, p. 291.*

359. There being no limitation of time specified in the charter-party, it is an indefeasible hiring for every voyage which the vessel shall have undertaken before notice from the owner of his intention to put an end to the contract. And where it was stipulated in the charter-party that payment should be made to the order of B, the owner, and C, as the attorney for B, collected the money due, it is not necessary to inquire as to the rights of C, as vendee, during the continuance of the charter-party.—*Vol. 26, p. 256.*

360. A chartered steamer bearing despatches for the government while proceeding in the night time up the James river struck a floating hulk, and in consequence of the injuries received, sank. It was shown that the accident was owing to no fault or negligence of the officers and crew, and that it was indispensable that the voyage should be undertaken. Held that the marine risk, though borne by the ship owner by the terms of the charter party, was justly assumed by the United States, and that the rule of one-third new off for old should apply in the cost of repairs.—*Vol. 28, pp. 94, 95.*

361. Evidence of the delivery of the cargo is required as a condition precedent to the payment of freight, even where the vessel sails under a charter-party, provided the bill of lading stipulates that the cargo shall be delivered at the port of destination (dangers of the seas excepted) at the risk of the carrier.—*Vol. 28, pp. 217–219.*

362. When it is stipulated in the charter-party that the government may purchase the vessel, the annual interest specified is computed from the date of the contract until the day of purchase and delivery of the vessel, unless some portion of the time has been lost through fraud, or carelessness of the owner, in which case the time thus lost is to be deducted.—*Vol. 28, pp. 359, 360.*

363. Where a contract of affreightment after the usual manner was made with a quartermaster, and service had been performed by the vessel agreeably to the conditions of the charter-party, and payment therefor had been made by the second party, it will be presumed that the quartermaster acted within the scope of his authority in making the contract, and any deduction from the stipulated charter rates in a second settlement to include the first settlement is held to be unauthorized and in violation of the contract.—*Vol. 28, pp. 88–91.*

364. And when the quartermaster notified the captain of the vessel that a less per diem rate would be paid, and the captain refused his assent to the reduced rates, whereupon the United States officer notified him that his vessel was seized by the government to its use, it was held that the charter-party having been entered into by com-

petent parties, could be changed only by their mutual assent; that the seizure did not destroy any rights of the ship owner, under the contract; and that the liability of the government continued unchanged so long as it controlled the vessel.—*Vol. 28, pp. 88-91.*

365. Where a steamboat under a per diem contract with the quartermasters' department was injured by the shot of rebel batteries, in consequence of which repairs had to be made; Held that the cost only of such repairs could be allowed, but that the per diem rate of pay while making the repairs was purely a question of damages in the nature of a marine tort, and without the scope of the authority of the accounting officers to settle.—*Vol. 28, pp. 149, 150.*

366. In a case of a vessel in the employ of the government being injured by shots from rebel batteries, the United States, not having assumed either the war or marine risk, are not liable. When the contract does not fix the liability of the government, and there is no law for adjusting damages, neither the accounting officers nor any agent of the government can settle any claim therefor.—*Vol. 25, p. 155.*

367. Repairs made prior to the service of a vessel on the voyage contracted for, and which have not been taken into the account and made part of the consideration in the purchase of the vessel, are not embraced within the rule of one-third new off for old, but should be liquidated entire. *Vol. 30, pp. 471, 472.*

368. When the United States quartermaster in a charter-party stipulates that certain risks not perils of the sea shall be borne by the government, the expenditures incurred to repair injuries falling within such risks are to be charged to transportation of the army.—*Vol. 28, p. 383.*

369. In the case of a chartered transport in the military service of the United States the contract provided that the marine risk should be borne by the owner; but when a deviation from the course of the voyage took place by the orders of the quartermasters' department, and in consequence of which the vessel suffered injuries, the government was held liable for the cost of the repairs, in accordance with the rule of admiralty, although the damages were not caused by extraordinary peril.—*Vol. 29, pp. 144, 145.*

370. Claim being made for injury done a steamer in the service of the United States under a per diem contract, by collision with an army government vessel, held that the time spent in making repairs is to be paid for by the party causing the injury, and the net interest upon the value of the vessel, the net profits of its use, and the costs and charges of manning and victualling, (if they have been incurred,) are the measure of the liability.—*Vol. 31, pp. 14, 15.*

371. A vessel in the employment of the quartermasters' department under a charter-party, was discharged from the service as unfit for the voyages required; subsequently, having been temporarily repaired, she was again employed under the old charter-party, a claim having been presented for payment for the time intervening

between the first and second hiring; it was held that a condition subsequent was not created so as to charge the government with the payment for the lost time.—*Vol. 29, pp. 236, 237.*

372. Where a claim was made by the owners of a steamer for damages or indemnity for a contract abrogated by the government without good cause. Held that damages arising from a breach or non-fulfilment of a contract can only be allowed by Congress, but where a contract in part performed has been abrogated by government, allowance for services and expenditure of time and money actually incurred may be made.—*Vol. 30, pp. 494, 495.*

373. A ship in the service under contract by bill of lading, by which it was agreed that the agent of the government had the right to change her port of destination, was, on her arrival at Port Royal, ordered to proceed to Savannah. On this voyage she was run ashore, and claim was made for the repairs necessary. Held that the voyage from Port Royal to Savannah was undertaken in pursuance of the stipulations of the contract, and was not a deviation, and the risks encountered were those assumed by the owner.—*Vol. 30, p. 466.*

374. Two canal boats, hired for purposes of transportation on the 10th of December, 1861, and the 1st of January, 1862, respectively, were, on the 26th of May, 1862, made into a floating wharf, and finally destroyed. Held that the new use made of them was a conversion by the United States, and that the value of the boats, and not the per diem rate of hire, could be allowed after the date of hire to the date of conversion.—*Vol. 30, p. 58.*

375. Where a vessel was in the service by contract at a rate deemed excessive by the Quartermaster General, and payment was refused at the stipulated price, held as there was nothing in the charter-party suggesting that it was subject to the approval of the Quartermaster General, the parties contracting in good faith with the subordinates of that officer are not bound by the private instructions issued by him, if without notice, and the transactions be within the scope of the subordinate's authority.—*Vol. 30, pp. 445-447.*

376. Where a chartered transport in the employment of the quartermasters' department received injuries in consequence of a collision with a patrol steam tug belonging to the government, and a claim for repairs and demurrage was presented. Held, that to entitle claimant to recover, it must appear that he complied with the regulations for the government of pilots; that nothing was omitted by him which the exercise of ordinary care, caution, and maritime skill required, and that the collision was unavoidable.—*Vol. 29, pp. 12-16. CONTRACT, V, 576; FREIGHT, 888.*

CHECKS. .

SEE *Bills of Exchange—Drafts.*

377. B, a disbursing officer, had funds on deposit at the sub-treasury, New Orleans. C, a private soldier, advanced money to B, taking the check of the latter on the sub-treasury. C neglected to demand payment, and meanwhile the State of Louisiana confiscated all deposits in the sub-treasury. The claim of C being presented at the treasury was allowed and charged over to B, but the Comptroller decided that the charge against the disbursing officer was improper and unjust, and directed an account to be stated in his favor for the amount.—*Vol. 25, pp. 272–274. DRAFTS, 793.*

378. Old checks drawn by disbursing officers, who have gone out of service, and have received credit on receipts founded on the checks, will only be paid when the payee and all intermediates who have held the checks have been loyal, provided also the checks have been issued for pay or supplies due, and enough of the fund against which they are drawn remains after the officers' accounts have been settled.—*Vol. 31, p. 73.*

379. Checks given by disbursing officers do not create valid claims against the government.—*Vol. 31, pp. 301, 302.*

380. Claim was made for the payment of a check drawn on the assistant treasurer at San Francisco by an officer subsequently dismissed for disloyalty. Held that even had the check been given by the officer in the regular course of his business as disbursing officer, yet, since the settlement of his accounts shows a balance due the government, there is no money in the treasury applicable to its payment, and the check of itself affords no evidence of a claim against the government.—*Vol. 30, p. 566.*

381. A treasury transfer check drawn in 1847, and indorsed by an officer of the quartermasters' department, payable to the order of A. B., deceased, the husband of the claimant and administratrix, was presented for payment 20 years after date. Held that it must first be shown that the United States had never credited the officer in the settlement of his account, by the receipt of the payee, and, in order to entitle claimant as administratrix to receive payment, that the estate of the decedent had not been settled; otherwise, in the absence of any agreement between the heirs, claimant would be entitled to her legal proportion only.—*Vol. 30, p. 366.*

382. Where a paymaster's clerk, without the authority of his principal, drew a check payable to A. B. or bearer, instead of order, and afterwards abstracted the check from the letter-box in the office of the paymaster and sold it, held that it is not in the power of the accounting officers to afford relief to the paymaster, there being no statute providing for the case.—*Vol. 29, p. 21.*

383. When a certain sum due a deceased private marine for extra pay, subsistence, and clothing undrawn, was charged in the account of the paymaster and carried to his credit, but it was afterwards proved that the paymaster had given his checks for such sums payable to the order of the private, who never had presented the same for payment, and the paymaster having died, the claim was presented to the treasury for payment, it was held that, as a condition precedent to the payment of the checks as such, the indorsement of the original payee was required; that the administrator of the paymaster must deposit with the Treasurer an account equal to that of the checks; and that any valid claim existing against the estate of the decedent may be paid through the accounting officers to the extent of any money due from government, but the surrender of the drafts as evidence of such claim must first be made.—*Vol. 25, pp. 130, 131.*

384. A check for \$600, given by an officer for that amount in gold, intrusted to his safe keeping, was refused payment on the ground that the officer had no right to make his office a depository for the money of citizens, as the practice tended to defeat the objects of the act of March 3, 1857, requiring disbursing officers to keep their funds on deposit.—*Vol. 30, p. 402.*

385. The authority under which disbursing officers draw and pay out checks is the act of March 3, 1857, (11 Stat., 249,) and the creditor is as much bound to take notice of this law as is the disbursing officer. Accepting a check which the officer is not authorized to draw, or omitting the ordinary steps to secure acceptance and payment, he can make no claim upon the treasury. His claim is then one to be considered by Congress.—*Vol. 30, pp. 22-24.*

386. Where the cashier of a bank paid the check of a United States paymaster drawn on the assistant treasurer at New York, and which was lost or stolen from the mail; payment having been stopped, he was required to furnish his affidavit that he had paid the check, and the affidavit of the cashier of the bank to which it had been transmitted for collection that it had never been received, together with an indemnity bond for double the amount of the check, in order to justify the paymaster in issuing a duplicate.—*Vol. 30, pp. 413, 414.*

CHECK BOOKS.

387. The assignment of check books must be *bona fide*, and to the family of the soldier, or a lawful creditor.—*Vol. 30, pp. 33, 34.*

388. If the soldier be charged with desertion, proof must be produced either of pardon or of removal of the charge, or that he has been properly discharged.—*Vol. 30, pp. 33, 34.*

389. Money taken from soldiers under General Orders No. 305, of series 1864, when the charge of desertion is pending, cannot be returned, except, as a preliminary to settlement, all claims for services, as required by the terms of the order referred to, be satisfied.

390. When the soldier, subsequent to his desertion, places himself

or has been placed, within the power of the military authorities, and they refuse or neglect to act upon his case, the amount of his check book will be paid to him or to his assignee. (See General Order of December 27, 1864.)—*Vol. 30, pp. 33, 34.*

391. A private enlisted as substitute for one year and was mustered into the military service. The money which he received as bounty, under the provisions of General Orders 305, of 1864, was deposited with the paymaster, and a check book for the amount issued to him. While on his way to join his regiment the soldier fell sick and was transferred to a regular hospital. While sick he assigned and transferred his check book. He subsequently deserted. The assignee claims the amount credited in the check book, but it was held that until the deserter returns and completes the term of his service, or proves that he was not a deserter, or if a deserter, pleads a legal pardon, the money, held for the protection of the government, will not be returned.—*Vol. 28, pp. 376-380.*

CLAIMS OF STATES.

392. Claims in favor of States for services of their troops, unless otherwise directed by Congress, must be adjusted in conformity with the rules and rates of allowance prescribed by law for volunteers mustered into the service of the United States.—*Vol. 15, p. 295.*

393. Claims in behalf of States for services of their troops must be prepared for presentation at the treasury, at the expense of the claimants. And expenditures for clerk-hire, stationery, &c., incurred in preparing and presenting such accounts, will not be allowed.—*Vol. 15, p. 296.*

NOTE.—This decision was confirmed by Attorney General Crittenden.

394. The War Department alone can determine what troops not borne upon the United States rolls were "employed" in the service of the United States, within the meaning of the acts of July 17 and 27, 1861. (12 Stat., 264, 276.)—*Vol. 30, p. 611.*

395. Mustering and disbursing officers for collecting and drilling volunteers, under the act of August 5, 1861, (12 Stat., 316,) and July 11, 1862, (12 Stat., 535,) do not pay commutation for clothing nor pay proper, but the actual expenses of travel prior to muster.—*Vol. 24, p. 502.*

396. Under the acts of July 17, 1861, (12 Stat., 261,) and July 27, 1861, (12 Stat., 276,) it was held by the Comptroller that States cannot have refunded to them expenditures voluntarily incurred in transporting from battle-fields, subsisting, and furnishing in their own States, hospital and other comforts to soldiers wounded in battle, after they were mustered into the United States service, since Congress alone has the power to grant relief.—*Vol. 25, p. 216.*

397. An apparent indebtedness of the State of Virginia, on account of money paid by the United States in the settlement of revolution-

any claims, and for which the proper vouchers have not been filed, will not offset claims for expenses of organizing volunteers, &c. Acts of July 17, 1861, (12 Stat., 264,) and of July 27, 1861, (12 Stat., 276.)—*Vol. 24, pp. 103-105.*

398. The settlement of claims for expenditures, &c., by States, under the acts of 17th and 27th July, 1861, are to be made exclusively through the Third Auditor. See acts of July 17, 1861, (12 Stat., 264,) and July 27, 1861, (12 Stat., 276.)—*Vol. 27, p. 128.*

399. The State of Illinois made heavy expenditures for the transportation of troops, and a board of army officers, appointed under special act of the legislature of that State, examined, allowed and certified to the same. Held that the certificates of payment filed by said auditors should be regarded as original vouchers, within the meaning of the rules of the Secretary of the Treasury, under the act of July 27, 1861, (12 Stat., 276,) but that items and minor accounts of the State must be governed in the settlement by the facts shown in each case.—*Vol. 24, pp. 1-5.*

400. When from the manner of keeping the State accounts it becomes impracticable to furnish the original receipts, copies thereof duly certified by the State officers will be received.—*Vol. 24, pp. 23-25.*

401. The Third Auditor, by law, has exclusive and final jurisdiction over Oregon and Washington Territory war claims, except so far as this office may be called upon to decide collateral questions, as to whom the payments shall be made, &c. Act of March 2, 1861, (12 Stat., 198, sec. 1.)—*Vol. 23, pp. 409, 410.*

402. B imported arms, which, by order of the Ordnance Office, were delivered to the State authorities of Kentucky. The claim filed is for duties and carriage of arms. Held that the duties are, by law, to be refunded, and not a charge to the appropriations of arms; that the receipt of the proper authority that B has paid the duties must be furnished; that the item for carriage, &c., is a charge to the quartermasters' department. Act of July 10, 1861, (12 Stat., 255.)—*Vol. 23, p. 353.*

403. *Semble* that the acts of Congress reimbursing States for expenses of volunteers do not apply to individuals. See letter to Secretary Chase. See, also, act July 17, 1861, (12 Stat., 264;) act July 27, 1861, (12 Stat., 276.)—*Vol. 23, pp. 394-400.*

404. The claim of the State of Maine for organizing a regiment for the Mexican war was allowed, with interest from date of payment by the State to date of reimbursement by the United States. See section 3, act of June 2, 1848, (9 Stat., 236,) allowing interest in such cases; also act of February 9, 1859, (11 Stat., 382,) authorizing the claim to be settled.—*Vol. 22, pp. 414, 415.*

405. Where claims of States were made for reimbursements of expenses incurred in raising volunteers, even if incurred in pursuance of a call made under the act of July 17, 1862, (12 Stat., 599, Sec. 14.) Held that they should be regarded as coming under the provisions of the act of July 17, 1861, (12 Stat., 261,) and settled for as State

accounts. And where under the act of July 17, 1862, the expenses were those of enrollment and draft, and not of volunteer enlistment, held that such claims be treated as an ordinary account of the State for reimbursement of expenses incurred in raising troops for the suppression of the rebellion, and settled under the rules governing State accounts, and paid from the same appropriation. *Vol. 28, p. 179.*

406. The laws of the United States provide for all persons *after* they are received into the military service; and the acts of July 17 and 27, 1861, (12 Stat., 264, 276,) limit the expenditures on account of raising troops to the period prior to muster. But if the United States fail or neglect to make provision actually necessary, or having provided for it by law, fail, from any cause, to carry such into effect, and the State supplies the neglect or failure, the expenditures thus made should be reimbursed, even if made after the muster of the troops into the United States service. But it should be made to appear clearly that the expenditure was necessary, and such an one that if not made by the State must have been made by the United States. *Vol. 28, pp. 773-776.*

407. Expenditures voluntarily incurred by the States in transporting from battle fields wounded soldiers, and furnishing them, in their own States, hospital and other comforts, would not be regarded as such necessary expenditures as to entitle the States making them to reimbursement. *Ibid.*

408. And where an unusual demand had exhausted the market, and prices rose higher than the rates prescribed by the regulations, and a delay to furnish troops until the needed equipments could be found in other markets, at regulation prices, might have been disastrous; and the States proceed to buy them at once on the best attainable terms, there being no reason to suspect combination between buyers and sellers to increase the prices; Held that the States may be reimbursed at the prices paid, even if higher than those fixed by the regulations. *Ibid.*

409. When it is satisfactorily shown by any State that proper care was observed to secure the services, as drill masters, of those only who were competent to instruct, and that no additional expenditures were incurred for them beyond what would have been incurred if the officers themselves had drilled the men, expenditures on account of drill masters may be allowed. *Vol. 28, pp. 773-776.*

410. In the settlement of State claims, when vouchers which should have been either disallowed or suspended for explanation have been overlooked or admitted without comment, and in disregard of law or the regulations, they may be afterwards taken up and charged against the claimant, so long as the account remains unsettled. But where vouchers are objected to, all the objections which are intended or expected to be made against them should be made at once, in order that the claimant may not be subjected to unnecessary and vexatious delays. *Vol. 28, pp. 773-776.*

411. In the settlement of the war claim of the State of Iowa

vouchers indorsed with the amounts found due, and certified by the auditing board appointed by a law of the State, were held to be equivalent to original receipts for the amounts thus found and certified, whenever they included matters recognized by army regulations.—*Vol. 29, pp. 146, 147.*

412. As regards the settlement of State claims under acts of July 17 and 27, 1861, (12 Stat., 264–276,) the war is held to have closed when recruiting ceased in the State, and all allowances made after that date will be exceptional, depending on certain contingencies. After August 20, 1866, the date of the President's proclamation declaring the war at an end, no allowance whatever will be made.—*Vol. 31, pp. 282, 283.*

413. Certain claims for services and supplies, &c., known as the Oregon and Washington Territory war claims, were originally certified by the territorial governments of Oregon and Washington. The certificates of indebtedness were sold and assigned, passing from hand to hand as a kind of currency. A commission legally constituted, determined the amount to be paid in satisfaction of these claims, and Congress ordered that payment should be made to the claimants or their legal representatives. Held that it is the duty of this office, (Comptroller's,) by law, as it hitherto has been its practice, to decide upon the validity and legality of powers of attorney, transfers, and assignments of claims, subject to the laws of Congress and the legal interpretation thereof. The acts of July 29, 1846, (9 Stat., 41,) February 26, 1853, (10 Stat., 170,) making all transfers and assignment of claims before the allowance and ascertainment of demand due, and issue of warrant for payment thereof void, cannot be held to apply in the above claims, and payment after the accounting officers shall have certified to the balance should be directed to be made to the assignee. Acts of August 18, 1856, (11 Stat., 92, sec. 11;) and June 14, 1858, (11 Stat., 363, sec. 2)—*Vol. 23, pp. 261, 262.*

CLAIMS.

SEE *Quartermaster's Stores.*

I. GENERALLY.

II. FOR DAMAGES.

I.—GENERALLY.

414. The law requires that all claims against the United States shall be settled at the Treasury Department. No officer of the government, therefore, has a right to submit a claim to the decision of referees.—*Vol. 5, p. 1.*

415. A party who prefers a claim against the government which is not passed by the accounting officers, and elects to resort to Congress for relief, must abide by his election, and fail or succeed in his

application for redress before that body.—*Vol. 11, p. 272; vol. 17, p. 213.*

416. After a claim has been rejected by Congress on its merits, it cannot be considered by the accounting officers of the treasury.—*Vol. 9, p. 390.* See opinion of Attorney General, August 23, 1845.

417. A claim against the United States in the hands of an assignee of the original creditor is subject to all the equities existing between the assignor and the United States; and those equities, so far as they are in favor of the United States, must be first satisfied before the assignee can reap the benefit of the assignment.—*Vol. 10, p. 53.*

418. Payment may be made to a purchaser, at vendue, of a claim against the United States, exposed for sale by the assignees of the original claimant, who became bankrupt. *Edward's case.*—*Vol. 16, p. 46.*

419. Where bills receipted by the proper parties were made out in quadruplicate, and two of them were lost, and the remainder presented for payment by the assignee of original holder, held that on filing a bond of indemnity to secure the United States against payment of the missing voucher, payment may be made.—*Vol. 26, p. 68.*

420. Transfers and assignments of claims, and powers of attorney for receiving payment before the allowance of such claim, the ascertainment of the amount due, and issuing of a warrant for the payment thereof, under the acts of July 29, 1846, (9 Stat., 41,) and February 26, 1853, (10 Stat., 170,) are null and void.—*Vol. 23, pp. 151-153.*

421. A claim that has lain dormant for twenty-five years cannot be allowed on evidence which is in direct conflict with that furnished by the records of the army at the time when the claim purports to have originated.—*Vol. 15, p. 89; vol. 18, pp. 296-298.*

422. The owner of certain wagons left them on public ground in such a situation as to lead the subordinates of the quartermaster's department to suppose that they belonged to the United States. They were used in the public service, and the owner acquiesced without notice or complaint. Held that he had no legal claim on the government for the use of the wagons, or for the damage which they sustained.—*Vol. 15, p. 156.*

423. Payment to the committee of a lunatic, properly appointed, is legal.—*Vol. 17, pp. 3, 4; vol. 23, p. 356.*

424. Payment to attorney in fact under a power granted prior to the allowance of a claim is irregular, and will not be allowed. Opinions of Attorneys General, vol. 6, p. 60. See also act of February 26, 1853, (10 Stat., 170.)—*Vol. 22, p. 173.*

425. The pay of an individual in the service of the United States is not a claim in the meaning of the law of February 26, 1853, (10 Stat., 170.)—*Vol. 27, p. 191.*

426. It is against the rules of this office to furnish claim agents with materials to sustain claims against the government.—*Vol. 24, pp. 403, 404.*

427. When a debt is due a firm, and one of the partners deceased, payment may be made to survivor.—*Vol. 24, pp. 430, 435, 436.*

428. When, by act of Congress, (June 20, 1862, 12 Stat., 906,) an appropriation of twelve hundred dollars (or so much thereof as may be necessary) was made in favor of Admiral Paulding to defray the expenses of a suit brought against him while flag-officer, &c., acting in the line of his duty, held that the validity of the details of his account, and the items and vouchers thereof, should be determined to the satisfaction of the Secretary of the Treasury.—*Vol. 25, p. 33.*

429. Where a company of infantry was temporarily doing duty, as such, on board the frigate Congress, when sunk by the Merrimack, it was held that the members of the company were not entitled to the benefit of the act of April 2, 1862, (12 Stat., 375, 376,) providing for the payment of a sum not exceeding sixty dollars in each case, to cover losses of the sailors, marines, and crews of the vessels engaged in the naval actions with the Merrimack.—*Vol. 25, pp. 51, 59, 60, 105, 106.*

430. A claim for subsistence of troops, supported by the affidavit of the party providing the subsistence, together with receipt for money paid by claimant, was rejected on the ground that it was not shown that the troops had not been mustered in and subsisted during the period claimed by the United States.—*Vol. 25, p. 176.*

431. The prosecution of claims cannot be made by any one holding a place of trust or profit by appointment of the executive department. A sutler is within the prohibition of the act of February 26, 1853, (10 Stat., 170,) and he cannot act as agent to prosecute claims against the United States.—*Vol. 16, p. 180.*

432. B, a contractor to supply government posts in Arizona, files a claim for supplies and transportation. A portion of his stores were burned by military authority, together with the accounts, in order to prevent their falling into the hands of the rebels. Held that for that portion of the stores already furnished to the government, the accounts and vouchers of the same being destroyed, the memoranda of the contractor and the affidavits of the officers receiving the stores should be carefully examined and liberally construed, in order to arrive at a just allowance.

It was also held that the transportation should be allowed, according to the terms of the order of the Secretary of War, of March 9, 1860, and that this order was to be regarded as the basis and condition precedent of all contracts entered into between the United States quartermaster and B.—*Vol. 24, pp. 154-160, 423, 424, 517, 518, 652-658; vol. 26, pp. 33-38.*

433. The awards and decisions of a commissioner appointed by Congress to settle claims are final within his jurisdiction, conferred by law, and the accounting officers are restricted in their examination to the inquiry whether the terms, &c., have been strictly complied with.—*Vol. 24, p. 289.*

434. When an amount was suspended to B, as unauthorized compensation to volunteers employed as boatmen in the everglades of Florida, held that, by the laws of March 3, 1839, (5 Stat., 349,) August 23, 1842, (5 Stat., 510,) and September 30, 1850, (9 Stat., 542,) no such allowance could be made, Congress alone having the power to adjudicate.—*Vol. 25, pp. 169–171.*

435. When the State Agricultural Society of Wisconsin presented a claim for buildings, fences, lumber, &c., on their grounds surrendered to the State for military purposes, and there is filed with the account no evidence of contract on the part of an agent or officer of the United States, or schedule of items, or description of buildings or localities, by which to identify property or warrants of title, if regarded as real estate, or receipt for it by the United States quartermaster, if regarded as personal property, or evidence of title on part of claimant, held that the State and not the society is the legal claimant, and that claimant must produce evidence of title as a condition precedent of payment. If it be presented as an equitable claim the accounting officers have no jurisdiction in the premises.—*Vol. 25, pp. 111–113.*

436. It is not the practice of this office to recognize any escheat. But if heirs or legal representatives do not appear to claim balances due on the books, they remain undrawn in the treasury, and subject, after due time, to the surplus fund act or other limitations of law.—*Vol. 23, p. 450.*

437. Where funds have been furnished to an agent to purchase arms, under direction of the Secretary of War, his accounts for disbursements must first be submitted to the Secretary of War and Bureau of Ordnance for administrative action before settlement by the accounting officers.—*Vol. 23, p. 458.*

438. Claims and accounts properly entitled to the administrative action of a bureau or head of department must first be approved by that bureau or head of department before settlement by accounting officers; and these officers have the right to call upon such bureau, &c., for information.—*Vol. 23, pp. 343–345, 380; vol. 24, pp. 73, 74.*

439. Paragraph 1004, of article 69, of the General Regulations, March 1, 1825, and paragraph 18, of article 43, of those of December 31, 1836, require that the Quartermaster General shall decide upon all claims arising under the regulations of his department, and shall transmit the accounts of his subordinates, with his remarks thereon, to the accounting officers.—*Vol. 7, p. 68.*

NOTE—See paragraphs 1041 and 1042 Army Regulations of 1863.

440. Expenditures in the quartermasters' department will not be acted upon in this office until they shall have first undergone an examination by that department.—*Vol. 24, p. 73.*

441. Although a claim be approved and ordered to be paid by the War Department, the accounting officers are not thereby precluded from an examination and settlement according to the law and evidence.—*Vol. 23, pp. 376–378.*

442. The order of the Secretary of War, allowing a claim, is not binding upon accounting officers, when made under a mistake of facts and against the right of the case.—*Vol. 21, p. 300.*

443. T. J. O'Neil, holder of certificate of indebtedness for claims originating in the Indian war in Oregon and Washington Territories, 1855-'56, hypothecated the same with one Taylor, as collateral for \$1,200 loaned him by Taylor. Taylor cannot be reached, being in the revolted States, and O'Neil demands settlement, claiming the difference between the original amount and the sum due Taylor. Held that this was the correct mode of settlement.—*Vol. 23, pp. 310, 311.*

444. Where the Chief of Ordnance directed the Burnside Rifle Company to deliver arms to an express company, and they were thus delivered, held that the evidence of delivery to an authorized officer of the United States is a condition precedent to payment of the claim at the treasury.—*Vol. 23, pp. 364, 365.*

445. Claims for payment of property sold to government should be accompanied with evidence of delivery or of approval by the head of the appropriate bureau or department. If the emergency require immediate payment before the usual evidence of delivery has been furnished the accounting officers, the head of the bureau or the Secretary of the Department should enclose his approval of the claim with the reasons for such omissions.—*Vol. 23, p. 221.*

446. A loyal citizen of Springfield, Green county, Missouri, had a horse stolen from his residence and sold to a quartermaster of the army for public use. The owner applied for the value of the horse, with satisfactory proof of the facts. Held that the law is well settled that the vendee of stolen property cannot acquire any title from the thief vendor, who had none to transmit, and that, although formerly in England it was the law that a purchase in market overt vested a good title in the vendee, even if the vendor had stolen the goods, it is held in our courts that the English doctrine of market overt does not obtain in this country, and that payment must be made to the party proving his title.—*Vol. 31, p. 671.*

447. Two settlements were reported: one for recording a deed \$1, and the other for repairing a lock, \$1. Decided that claims for small and insignificant amounts, which should properly have been paid by a disbursing agent, will not be entertained, in the first instance, by the accounting officers.—*Vol. 23, pp. 254, 255.*

448. Where a claim is presented in the name of a person with an *alias* the identity must be clearly proved.—*Vol. 19, pp. 542, 559. 560.*

449. A decision on claims may be suspended in order to afford an opportunity to the claimant to furnish testimony, and the accounts may be recommitted to the Auditor to report thereon.—*Vol. 16, pp. 2, 3.*

450. B claims the valuation of a pre-emption under the 12th section of the Cherokee treaty, (1835, 1836,) 7 Stat., 484. He does

not furnish the evidence required under the 17th section of the treaty. Held that such claims and accounts cannot be paid without the adjudication and certificate of the board of commissioners, as provided by the treaty. See *Opinions Attorneys General*, October 9, 1850, vol. 5, p. 268.—*Vol. 16, p. 84.*

451. When a claim is made, under a law or regulation, the terms thereof must be specifically complied with or the claim will be disallowed.—*Vol. 21, pp. 310–312.*

452. Supplies for a ship are furnished on the credit of the owner, and, in case of a United States vessel, if the supplies are furnished to the person in charge of her, who has contracted to navigate the ship and furnish all supplies for a specified sum, the United States are liable for the supplies furnished to him by a third party, and the cost thereof is to be deducted from the amount due him under the contract.—*Vol. 19, pp. 422, 423.*

453. Under the joint resolution of March 1, 1845, (5 Stat., 797,) the Secretary of War was directed to allow and pay just and equitable claims arising in the Florida war. In respect of the duties of the accounting officers therein, it was held: 1. That in all cases where they have decided upon the claims, their action is completed unless their decisions are reversed or modified by the Secretary of War. 2. That in cases where the accounting officers have not yet acted, it is their duty to examine them and submit a report to the Secretary of War. 3. That the claimants have in all these cases a right of appeal to the Secretary of War.—*Vol. 16, pp. 97–100.*

454. Claim was made by A. for expense of defending a prosecution for false imprisonment, and so much of it as was found to have been for services was disallowed on the ground that no one authorized to do so employed him, and that no one can of his own motion make himself an employé or a creditor of the government.—*Vol. 30, p. 460.*

II.—FOR DAMAGES.

455. No allowance can be made by the accounting officers for property impressed into the service of the United States, nor for any special damages done to individuals or their property, by the troops of the United States.—*Vol. 8, p. 338. IMPRESSMENT, 971.*

Modified by act of March 3, 1849, allowing payment in certain cases. See also act of March 3, 1863.

456. The United States are not liable for property illegally destroyed by private soldiers not acting under orders. And no voucher for payment of such damages by a disbursing officer can be allowed in the settlement of his accounts.—*Vol. 7, p. 209.*

457. Congress alone can afford relief to claimants for forcible entry and use of private property by the United States.—*Vol. 18, p. 7.*

458. An account unsupported by the proper evidence cannot be entertained at the Treasury Department; nor can a claim for dam-

ages unadjudicated and unliquidated be estimated and adjusted, in the first instance, by the accounting officers.—*Vol.* 25, *p.* 136.

459. No claim for trespass, or conversion, or damages, can be allowed and paid by the accounting officers. Such claims are not estimated for, nor are they within the scope of any appropriation.—*Vol.* 18, *p.* 7.

460. Claims for damages can only be acted upon by Congress, the accounting officers having no jurisdiction in the matter. Officers of the United States army took possession of the land of A, on which to erect forts. The damages having been appraised by competent authority, A filed his claim therefor at the treasury. Held that, according to uniform practice, the accounting officers have no jurisdiction in the premises. See Decisions January 30, 1855, December 13, 1854, act of May 1, 1820, (3 Stat., 568, sec. 7.)—*Vol.* 25, *pp.* 276, 277, 767–770.

461. Claims for damages, however equitable, cannot be allowed by the accounting officers.—*Vol.* 22, *p.* 160.

462. A disbursing officer has no right to adjudicate and pay for damages; nor can he be justified in paying for supplies seized within the enemy's lines without reasonable proof of the loyalty of the person from whom they were taken.—*Vol.* 26, *p.* 82.

463. In the case of Colonel Loring, who ordered payment to be made for certain damages, it was held that, though his action was not sanctioned by law or regulation, yet a reasonable time should be given him to obtain relief from Congress before his pay should be stopped. Act January 25, 1827, (4 Stat., 246.)—*Vol.* 20, *p.* 265.

464. Where the personal property of the captain of a vessel in the public service, and laden with government stores, was destroyed by the burning of the vessel, it was held that the claim did not fall within the jurisdiction of the accounting officers to liquidate.

He claimed that in saving the public property he neglected his own, which he might otherwise have saved, but it was held, further, that he did no more than his duty, and employed the time which rightfully belonged to the government in saving the property of the United States, and it was not such a case of voluntary jettison or sacrifice for the safety of the vessel and cargo as would justify a general average contribution.—*Vol.* 28, *pp.* 371–373. PROPERTY SEIZED, 1754.

CLERKS.

465. Clerks of commissaries and quartermasters are not entitled to a commission for making sale of public property at auction, in addition to their monthly pay.—*Vol.* 12, *p.* 509.

466. By the construction which has been given to the act of August 23, 1842, (5 Stat., 512,) clerks in the commissary department are not entitled to receive other allowance for any service than their regular wages as clerks.—*Vol.* 14, *p.* 182.

467. The compensation to which a non-commissioned officer, employed as a clerk to a paymaster, is entitled under the third section of the act of April 24, 1816, (3 Stat., 297,) is double the pay to which he was entitled as non-commissioned officer, and no more.—*Vol. 8, p. 506.*

468. The employment of civilians as clerks in the office of the Assistant Adjutant General is not authorized by regulation.—*Vol. 12, p. 113.*

469. There is no authority given by the Ordnance Regulation, or by the War Department, for the employment of citizen clerks at arsenals, except at Watervliet, Pittsburg, and Washington city. When the business of an arsenal is such as to require the employment of a clerk, a soldier may be assigned.—*Vol. 5, p. 323.*

470. A clerk in one of the departments cannot lawfully receive, for the time, his regular or fixed salary, and receive a higher compensation for performing other duty.—*Vol. 13, p. 237.*

471. A paymaster will be allowed for but one clerk.

Under the act of July 19, 1848, (9 Stat., 247,) paymasters' clerks are not entitled to three months' extra pay. See act of June 20, 1864, (13 Stat., 145, sec. 10.)—*Vol. 14, p. 440; Vol. 15, p. 214. PAY, VII, 1331.*

472. No clerk employed in the State, Treasury, War, or Navy Departments can, as agent or attorney, perform any services for individuals relating to claims against, or settlement with, any of the public offices.—*Letter signed by all the heads of departments, May 27, 1818. Recognized by Sec. Treas. as in force, September 11, 1835.*

473. The act of September 2, 1789, sec. 8, (1 Stat., 67,) forbids any person in the Treasury Department from taking any emoluments or gain, for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law, under the penalty of \$3,000, removal from office, and incapacity forever after to hold office under the United States.—*Vol. 27, p. 175.*

473a. By the 1st section of the act of March 3, 1791, (1 Stat., 215,) in case the offending officer is a clerk, the penalty is made a fine of \$500 and removal from office, for transgressing the 8th section of act of September 2, 1789, (1 Stat., 67.) See also the act of March 2, 1863, (12 Stat., 696,) in relation to persons in the military or naval service making or presenting fictitious claims, &c.—*Vol. 27, p. 175.*

474. The percentage authorized to be paid the clerks in the navy yard at Washington, D. C., cannot be assumed to be included in any of the regular appropriations, unless there be an express clause to that effect.—*Vol. 19, p. 448.*

475. The increased pay to first clerks of commandants of navy yards is construed to begin with the fiscal year next after the passage of the law. Act of February 21, 1861, (12 Stat., 151, sec. 8.)—*Vol. 23, pp. 25, 330, 331.*

476. No officer of the quartermasters' department has a right to

fix or increase the pay of his clerks, &c. That power vests, by the regulations of the army, in the Quartermaster General and Secretary of War.—*Vol. 19, p. 569.*

See Army Regulations, paragraph 940, ed. 1850. See also act of February 9, 1863, (12 Stat. 646, sec. 2.)

477. A quartermaster's clerk made claim for services, in taking charge of and arranging papers to facilitate settlement, rendered after the resignation of the officer whose clerk he had been. Held that for the time for which payment is claimed he was not in the service of the government. His appointment having been as clerk to an officer of the army, when that person ceased to be an officer he ceased to be a clerk. Claim was disallowed.—*Vol. 30, p. 201.*

CLOTHING.

478. When a soldier has drawn clothing in advance, but not more than he was entitled to at the time of issue, and is subsequently discharged under circumstances in which no fault can be imputed to him, no deduction should be made on account of the clothing received.—*Vol. 13, p. 254.*

479. A private soldier who, previous to receiving his allowance of clothing, receives and accepts a commission in the army, is not entitled to his clothing.—*Vol. 11, p. 346.*

480. The allowance to the volunteer for clothing, under the ninth section of the act of June 18, 1846, (9 Stat., 18,) is \$3 50 per month during the time he shall be in the service of the United States.—*Vol. 11, p. 462.*

481. A marine, rated as master-at-arms, and paid as such, is not entitled to clothing on any allowance of a marine for that time.—*Vol. 16, p. 539.*

482. The heirs of those deceased on board the United States steamer *Varuna* are entitled to the benefit of the joint resolution of July 11, 1862, (12 Stat., 623,) providing for compensation for property lost occasioned by the sinking of the same, not to exceed \$60 in each case.—*Vol. 24, pp. 477, 478.*

483. Evidence must appear on the muster-rolls to authorize payment of commutation of clothing. Army Regulations, par. 1152, 1155, 1160, 1336, ed. 1861.—*Vol. 24, pp. 644, 645.*

484. Where soldiers draw less than the monthly allowance of clothing, the difference will be allowed; but no commutation therefor at a higher rate than \$3 50 per month.—*Vol. 26, p. 322.*

485. If an amount be drawn in excess of that fixed by the Secretary of War, (Order No. 12, January 5, 1864,) the soldier should be charged with such excess.—*Vol. 26, p. 322.*

NOTE.—The order provides that, in the settlement of the clothing accounts of volunteers whose periods of service have been less than one year, they will be entitled to the following credits for the dif-

ferent periods of service, viz : Three months' service, \$23 93; six months' service, \$35 32; and nine months' service, \$40 34.

486. Where the receipts of parties to whom the money is due cannot be obtained, the accounts (for clothing and other military supplies) may be settled under section 2, act of February 7, 1863, (12 Stat., 641,) by authority from the Secretary of War, on proof satisfactory to him.—*Vol. 28, pp. 689, 707, 708.*

487. A soldier enlisted for one year or less, and having served over three and less than six months, will not be charged with the amount overdrawn if it do not exceed the allowance for six months; but if he has drawn over six months' allowance, he will be charged with such excess.—*Vol. 26, p. 322.*

488. Clothing advanced to a soldier discharged without fault, before such clothing would have been due him, will not be deducted from his pay.—*Vol. 21, pp. 176, 177.*

489. A soldier promoted can draw clothing only for the actual time he served as a private. He is entitled to the pay and allowances of a soldier up to the date of his promotion.—*Vol. 25, pp. 533, 534*

490. Clothing cannot be gratuitously issued to replace that thrown away by order of a commanding officer, or lost by accident. Over-issue on requisition of a medical officer in charge of hospital or depot of sick and wounded soldiers is not required to be debited to the soldier. See Army Regulations, appendix, p. 515, ed. 1863.—*Vol. 25, p. 618.*

491. In calculating payments for undrawn clothing, "the rates of the full term of five years should govern." See letter of Quartermaster General to Second Comptroller, May 23, 1850.—*Vol. 27 p. 144.*

492. In settling the clothing account of a discharged or deceased soldier in the regular army, he will be credited or charged for the period covered by the settlement, at the rate fixed for such period by latest General Army Orders or Regulations.—*Vol. 27, p. 150.*

492a. In settling the clothing accounts of volunteers, the rate fixed by the fifth section of the act of July 22, 1861, (12 Stat., 268,) viz : \$3 50 per month, will be adopted for the period covering settlement.—*Vol. 27, p. 150.*

493. Where the rolls fail to give any evidence upon which to base a clothing settlement, in respect of prisoners of war, the clothing account, in the absence of all data, will be assumed as settled at the date of capture, and commutation allowed from that time. This rule applies alike to deceased and discharged prisoners of war.

But where the rolls or final statements give the amount of clothing drawn since the last settlement, but fail to give the date of settlement, the rule adopted by the Paymaster General will govern: assume date of last payment as that of last settlement, and compute accordingly; this applies to deceased and discharged men.—*Vol. 28, p. 98.*

494. "Personal effects," within the meaning of the act of April 6,

1866, (14 Stat., 14.) are what are included in an officer's kit, especially clothing; the intent of the law not being to effect a general insurance to the amount of a month's pay upon an officer's room furniture, mess stores, crockery, and books.—*Vol. 29, p. 560.*

495. The authority to pay for clothing destroyed on account of infection on board ships of war does not rest upon any statute, but upon precedents made under the decisions of the Secretary of the Navy; and the maximum allowance in respect of officers is deduced from the act of April 6, 1866, (14 Stat., 14.) allowing one month's sea pay for clothing, &c., lost on account of casualty to or destruction of United States vessel, and in respect of other persons \$60. (See act of July 4, 1864, 13 Stat., 390.)—*Vol. 29, p. 549.*

496. In settling the clothing account of a soldier who has been a deserter, for the time prior to desertion, no credit can be given for clothing not drawn, but if he has drawn the full amount to which he was entitled, his allowance for the time of desertion only should be stopped. And when the date of desertion cannot be ascertained, the date of last payment may be assumed in lieu thereof.—*Vol. 28, pp. 544, 545.*

497. Since the passage of the act of March 3, 1865, (13 Stat., 487, sec. 2,) the clothing allowance of volunteers is the same as that of the regulars, and the commutation for clothing, undrawn during the first, second, and third years of the soldier's service, will be in accordance with the exact proportion laid down in General Order No. 2, January 7, 1865, for those years respectively.—*Vol. 28, p. 91.*

498. Stoppages against soldiers for time "absent without leave" should include the clothing allowance.—*Vol. 28, p. 283.*

499. Superintendents of soldiers' cemeteries commute clothing, and therefore are not allowed for commutation more for the first than for the second or subsequent years of their enlistment.—*Vol. 31, p. 393.*

500. In the settlement of the clothing accounts of three months', 100 days', and nine months' men, credit is given up to the maximum amount allowed for their periods of enlistment respectively, without regard to the period of actual service.—*Vol. 28, p. 279.*

COLORED SOLDIERS.

501. It being a presumption of law that a colored person enlisting in a State in which slavery was not permitted by statute, is free, until the contrary is established by evidence, he should not be required to prove that he was not a slave at the specified date, but positive and legal affirmative proof that he was a slave must be presented before the colored soldier can legally be denied the pay, clothing, and bounty allowed to such persons by the laws existing at the time of his enlistment.—*Vol. 28, p. 47.*

502. A colored man having escaped from slavery after July 17, 1862, under the 9th and 10th sections of the law of that date (12

Stat., 591,) is free, not having been claimed by a master proving himself loyal, and having been accepted as a volunteer into the United States army, under section 11 of the above act he is, as a free man, entitled to the bounty, provided at the time of his enlistment, for volunteers. (See also opinion of Attorney General of July 14, 1864.)—*Vol. 28, p. 54.*

503. A soldier, whatever be his color, is entitled not only to the fullest protection of his rights, but to the benefit of a doubt as to the extent of those rights when he applies for payment as a soldier.

In such a case, the colored soldier should make oath before a civil or military officer authorized to administer oaths, either that he was free on the 19th of April, 1861, or that at the time of enlistment he was actually enrolled and subject to draft in the State where enrolled, agreeably to section 3, act of June 15, 1864, (13 Stat., 129,) relating to the pay of colored soldiers.—*Vol. 28, p. 48.*

504. Colored soldiers who enlisted from the 15th day of June, 1864, to the 18th day of July of the same year, are, under existing laws, not entitled to bounty. See joint resolution of July 26, 1866, (14 Stat., 367,) amending joint resolution of June 15, 1866, (14 Stat., 357.)—*Vol. 29, p. 622.*

NOTE.—But afterwards modified, and \$100 allowed under Paymaster General's Order No. 47, of May 26, 1865.

505. The title of colored soldiers to pay, bounty, &c., is based upon their freedom and service, and being free at the time of their enlistment; if they furnish horses which are captured or killed by the enemy, they are entitled to pay therefor under the act of March 3, 1849, (9 Stat., 414.)—*Vol. 28, p. 330.*

506. In respect to bounty to colored volunteers the Attorney General having given an opinion upon the construction of the laws relating to such bounty, the following summary of that opinion is adopted by this office as the rules and regulations governing in claims for bounty by colored persons:

1. That persons of color who may have acquired their freedom by the provisions of the act of July 17, 1862, (12 Stat., 591, sec. 9,) and who were mustered into the military service prior to the 15th of June, 1864, are entitled to receive the bounty provided by law for volunteers.

2. That persons of color who may have escaped from slavery after the passage of the act of July 17, 1862, and who have been mustered into the military service before the 15th of June, 1864, and who were unclaimed by loyal persons at the time of their enlistments, are entitled to receive the bounty payable by law to volunteers.

3. That all persons of color emancipated by the President's proclamation of January 1, 1863, who after the date of that proclamation, and before the 15th of June, 1864, enlisted and were mustered into the service as volunteers, are entitled to like bounty.

4. That all persons of color mustered into the service after the 15th of June, 1864, are entitled to receive, respectively, such sums in

bounty as the President may have ordered in the different States, not exceeding one hundred dollars.

5. That all volunteers received into the service after July 4, 1864, are entitled to receive the same bounty for like terms of enlistment without regard to color; and

507. A colored soldier, free on the 19th of April, 1861, or if he were enrolled and subject to draft under the call of October 18, 1863, for three hundred thousand men, and was discharged for disability incurred *after* his enlistment, is entitled to all of the instalments that had become due and were unpaid at the date of his discharge.—*Vol.* 28, *p.* 181.

COMPENSATION.

508. Since the act of February 25, 1862, (12 Stat., 345,) making notes of the United States a legal tender, the accounting officers have no authority to pay to an officer, within the territorial limits of the United States, his salary, in gold, for any time he may have been absent on duty in a foreign country, but his necessary expenses are properly allowed in gold.—*Vol.* 26, *p.* 314.

509. The Attorney General, in case of Bailey, clerk in the War Department, who was paid \$5 per day by Colonel R. E. Lee for services as clerk to the board appointed under 6th section, army appropriations, August 31, 1858, decides that one person holding two offices may receive pay for doing the duties of both at the same time. Act of August 31, 1852, (10 Stat., 108;) act April 23, 1856, (11 Stat., 5, sec. 2.) See Opinions Attorneys General, vol. 8, *p.* 170; January 7, 1857; June 7, 1851, vol. 5, *p.* 765.—*Vol.* 20, *p.* 170; *vol.* 22, *p.* 405–407; *vol.* 25, *pp.* 426, 663, 664. See General Halleck's case, vol. 29, *pp.* 299, 315.

510. Payments for services beyond their regular pay made to persons in government employ, and embraced in the provisions of the act of August 23, 1842, sec. 2, (5 Stat., 510,) are prohibited.—*Vol.* 21, *pp.* 194–197.

511. The salary of paymasters' clerks being fixed by law, the accounting officers are not authorized to allow any sum beyond the salary so fixed.—*Vol.* 14, *p.* 52.

512. The salary allowed the Paymaster General by law was intended as a full and complete compensation for his services, and he is entitled to no other allowances whatever.—*Vol.* 2, *p.* 386.

513. The act of January 25, 1828, (4 Stat., 246,) requires that no money shall be paid to any person for his compensation who is in arrears to the United States, until such person shall have accounted for and paid all sums for which he may be liable.—*Vol.* 11, *p.* 224.

514. The proviso in the appropriation act of the 3d March, 1835, which prohibited extra compensation, &c., is not confined in its operation to the year for which the appropriations are therein made. Act of March 3, 1835, (4 Stat., 754)—*Vol.* 17, *pp.* 220, 221.

515. The second section of the act of August 23, 1842, (5 Stat. 512,) expressly prohibits an officer, whose pay and emoluments are fixed by law and regulations, from receiving any additional pay, extra allowances, or compensation, in any form whatever, for the disbursement of the public money, or any other public service or duty, unless the same shall be authorized by law, and the appropriation therefor explicitly sets forth that it is for such additional pay, extra allowance, or compensation.—*Vol. 12, pp. 159, 268.*

516. A steamboat inspector appointed by the Secretary of the Treasury under the act of August 30, 1852, (10 Stat., 63, sec. 9,) claimed pay as superintendent of repairs to transport steamers used by the quartermasters' department. Held that the acts of March 3, 1839, (5 Stat., 349,) August 23, 1842, (5 Stat., 525,) and September 30, 1850, (9 Stat., 542,) interdicting duplication of offices and extra pay, &c, did not apply, as an inspectorship was at some points merely a nominal office, and that the claim was valid.—*Vol. 28, pp. 113, 115.*

517. When the compensation of an officer is fixed by law, no head of a department, or accounting or executive officer, can increase the compensation. Such power belongs to Congress only.—*Vol. 8, p. 195.*

518. The collector of customs of El Paso attended, as witness, a military court of inquiry, and claimed per diem of \$3. Held, that the allowance was the measure of remuneration for actual expenses and not as extra pay, &c. Act of August 23, 1842, (5 Stat., 512, sec. 2).—*Vol. 24, p. 126.*

NOTE.—See the following authorities in regard to extra compensation: Act March 3, 1835, (4 Stat., 754;) act March 3, 1839, (5 Stat., 349;) act August 23, 1842, (5 Stat., 510;) act August 26, 1842, (5 Stat., 525;) act May 18, 1842, (5 Stat., 487;) act June 17, 1844, (5 Stat., 687;) act September 30, 1850, (9 Stat., 542;) act August 31, 1852, (10 Stat., 100.) See also Comptroller Brodhead's letter to Secretary of War, in Bailey's case, June 9, 1855, vol. 18, p. 270, and Opinions Attorneys General, of March 7, 1835, vol. 2, p. 701; April 4, 1839, vol. 3, p. 439; November 29, 1842, vol. 4, p. 123; December 8, 1842, vol. 4, p. 128; December 23, 1842, vol. 4, p. 139; October 18, 1844, vol. 4, p. 342; January 10, 1846, vol. 4, p. 464; March 1, 1849, vol. 5, p. 74; June 7, 1851, manuscript decision; October 17, 1857, vol. 9, p. 123; June 5, 1854, vol. 6, p. 506. See also decisions of Supreme Court United States, 16 Peters, 291. See also case of Harvey Brown, vol. 17, p. 220. See also *United States vs. Smith*, Am. Law Register, p. 269.

COMPTROLLER'S OFFICE.

SEE *Accounting Officers.*

519. Bonds are filed with the Second Comptroller merely for safe-keeping; but he has no agency or authority relating to their accept-

ance, or approval, the sufficiency of the sureties, or the penal sum for which they shall be given.—*Vol. 8, p. 164. CONTRACT, 546.*

520. The Second Comptroller of the Treasury has no authority to give up a bond to the obligors, or any one else, except by direction of the head of the department under whose authority the contract was made.—*Vol. 10, p. 266.*

521. The Second Comptroller is not authorized to permit the accounts and papers committed by law to his charge to be transported to the committee rooms of Congress.—*Vol. 2, p. 34.*

522. By the 5th section of the act of March 3, 1817, (3 Stat., 366,) it is made the duty of the Auditor "to receive from the Comptroller the accounts which shall have been finally adjusted, and to preserve such accounts with their vouchers and certificates." When this is done, such papers are no longer subject to the authority of the Comptroller.—*Vol. 10, p. 408. ACCOUNTS, 11.*

523. The disbursement of the contingent fund of the Second Comptroller's office is considered a part of the duty of the clerk, and does not entitle him to any extra compensation, either in the form of commissions or in any other manner.—*Vol. 14, p. 82.*

524. An incumbent Second Comptroller has no right to reopen a case decided by his predecessor, except upon the presentation of new and material facts, or the discovery of errors in calculations, &c.—*Vol. 17, pp. 47, 103; vol. 25, pp. 214, 223, 224, 250, 251.*

525. The Elmira and Wilmington Railroad Company claimed the refundment of the tax of three per cent. under the excise law. The Quartermaster General asked the decision of the Comptroller, who held that, in matters of revenue, he is not the proper law officer to determine.—*Vol. 24, p. 594.*

526. The right in an incumbent Second Comptroller to reverse a predecessor's decisions extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims in which material testimony is afterwards discovered and produced, (15 Peters, 401.) Cherokee treaty, August, 1846. Opinion of Attorney General Wirt, October 1, 1825, vol. 2, p. 9; opinion of Attorney General Taney, September 10, 1831, vol. 2, p. 463.—*Vol. 16, pp. 182, 183, 269, 493.*

NOTE.—As to the powers and duties of the Comptroller, see the following :

Act of September 2, 1789, (1 Stat., 65;) act of March 3, 1795, (1 Stat., 441;) act of March 3, 1809, (2 Stat., 535;) act of March 3, 1817, (3 Stat., 366.) Affirmative decision of President Jackson, July 1, 1835; of President Polk, August 9, 1845; of President Tyler, October, 1841; of President Fillmore, September 12, 1850. Opinion of Attorney General Wirt, (Opinions of Attorneys General,) vol. 1, pp. 624, 678; vol. 2, pp. 508, 544; of Attorney General Crittenden, (suppressed,) September 12, 1850. *Per contra*, Attorney General Berrien, *idem*, vol. 2, p. 303; Butler, *idem*, vol. 2, p. 652; Johnson, *idem*, vol. 5, p. 87; Crittenden, *idem*, vol. 5, p. 630; Cush-

ing, *idem*, vol. 7, p. 464. Letters of Comptroller Brodhead to Secretary Guthrie, January 10, 1854, and Secretary Chase, June 9, 1863.—*Vol. 25, pp. 137, 144.*

527. A requisition issued from the War Department for a less amount than the balance certified by the Second Comptroller, who refused his signature for the following reasons, viz :

First. There is no law authorizing the Quartermaster General to sit in judgment on the findings of the accounting officer.

Second. Until the passage of the joint resolution No. 48, of March 2, 1864, (14 Stat., 571,) there was no law, (except in certain claims under the act of July 4, 1864, 13 Stat., 381,) requiring the accounts and vouchers even to be sent to the military bureau to which they pertained; and the joint resolution referred to only required accounts to be sent to the proper bureau for examination, to be afterwards returned to the accounting officers for settlement.

Third. The jurisdiction of the accounting officers is established under the ordinance of September 11, 1781, act of September 2, 1798, (1 Stat., 65,) act of March 3, 1817, sec. 3, (3 Stat., 366,) and act of February 24, 1819, (3 Stat., 487.) These all speak of the decisions of the Comptroller as final and provide for no appeal.

Fourth. These laws were thus construed in the opinion of Attorney General Wirt, October 20, 1823; Opinions of Attorneys General, vol. 1, p. 624, 27th July, 1824, and 19th February, 1825; *ibid.*, p. 705; opinion of Attorney General Taney, 5th April, 1832, 31st May, and 18th December, 1832; Opinion Attorney General, vol. 2, p. 508; *ibid.*, p. 518; *ibid.*, p. 544; opinion (unpublished) of Attorney General Crittenden, 12th September, 1850. These opinions were indorsed by President Jackson, July 1, 1835; President Polk, August 9, 1845; President Tyler, October 9, 1841; and President Fillmore, September 12, 1850.—*Vol. 30, pp. 659-666.*

NOTE.—The act of March 30, 1868, declaring the sense of the act of March 3, 1817, makes the decisions of the revising Comptrollers final and conclusive in respect of all settlements made by them.

528. Under the act of January 25, 1828, (4 Stat., 246,) it is within the power and made the duty of the Second Comptroller to direct the Paymaster General to stop the officer's pay who is in arrears to the United States. It is the uniform and correct practice for the Auditor to report the circumstances of the indebtedness to the Comptroller, who, if the facts reported seem sufficient, is bound to take the necessary steps to cause to be withheld the officer's compensation.—*Vol. 20, pp. 306, 307. PAY, V, 1259.*

529. The Second Comptroller has no power to demand new security, or to relieve those who have become security for disbursing officers.—*Vol. 21, p. 135.*

530. The decisions of the Second Comptroller's office on questions of bounty are not to be understood as orders to the pay department, but as conclusions which are regarded by the office as justified by

law, and as indicating what will be its action in the settlement of accounts.—*Vol.* 30, *p.* 154.

COMPUTATION OF TIME.

531. The month is to be considered as composed of thirty days, where fractional parts are to be accounted for; but when a full month's service is performed it is calculated by the calendar.—*Vol.* 21, *p.* 359.

532. In cases where periods of service rendered by those employed at a stipulated monthly rate of compensation extend to and embrace fractional parts of any month, thirty days will be assumed and regarded as constituting the entire duration of such a month, in lieu of the twenty-eight, twenty-nine, or thirty-one calendar days it may contain, and the proportional allowance of compensation therefor will be computed accordingly. But for any full and entire month's service performed by persons so employed, they will be allowed and paid according to such stipulated monthly rate, without reference to the number of days the month may contain.—*Vol.* 12, *p.* 326.

533. In the computation of a period of time only one fractional part of a month can be reckoned; thus, from July 15 to September 20, inclusive, is two months and $\frac{6}{30}$ of a month, and not a fraction of seventeen days in July, and another fraction of twenty days in September.—*Vol.* 20, *p.* 296.

534. The rules for the computation of time in making payments to employes of the government having been so construed as in many cases to operate unjustly against the government, the following have been adopted and will be observed, when applicable, in all payments made hereafter:

1. The law providing compensation having ignored unequal duration of months by allotting the same pay to each, and the pay-tables having, for convenience, subdivided each month's pay into thirty equal parts, thus paying in twelve months of thirty days each the full salary provided by law for the entire year, the months should be assumed in computing pay, as they are by the law, to be of equal length, any other duration than thirty days being ignored.

2. To conform with the foregoing, to secure greater accuracy in computation, and to save the trouble and delay of four distinct calculations of monthly pay in hereafter computing the time of service of government officers and employes, thirty days will be assumed as the length of each and every month of the year.

3. For any full month's service performed by persons employed by the government at a stipulated monthly rate of compensation, (or yearly salary, if paid in regular monthly or bi-monthly instalments,) payments will be made at such stipulated monthly rate without regard to the number of days the month paid for may contain.

4. In cases when the service commences on an intermediate day of the month, and thus embraces only a fractional part thereof, thirty days will be assumed to constitute the entire duration of such month.

5. When the service terminates at an intermediate day of the month, and hence embraces but a fractional part thereof, the whole number of days during which service was rendered in such fractional part of a month will be allowed in making payments.

6. For convenience in calculating service embracing two or more months, or parts of months, but one fraction will be made. Thus, from the 21st of September to the 25th of November, inclusive, will be calculated from the 21st of September to the 20th of October, inclusive, as one month, from October 21 to November 20, inclusive, another month, and from 21st to 25th November, inclusive, five days, making two months and five days.

7. When two fractions of months occur in account for service, both together being less than a whole month, as from the 21st of August to the 10th of September, calculation of time will be from August 21 to 30, inclusive, (ignoring the 31st,) ten days, and from the 1st to the 10th of September, inclusive, ten days, making the time to be paid for twenty days.

8. Service commencing in February will be calculated as though that month contained thirty days: thus, from February 21 to the end of the month, inclusive, ten days will be allowed, though the actual time be but eight or nine days; provided that when service commences on the last day of February payment will be made for only one day in that month.

9. The foregoing rules do not apply to commutation of rations, nor to laborers employed at a per diem allowance. In computing them the actual number of days are to be ascertained and allowed.

10. Laborers employed by the month, and actually performing their first day's labor on the 31st day of any month, will be paid for that day.

11. Soldiers rendering little or no service on the day of enlistment or discharge, payment for both by the government is unjust. The day of enlistment, therefore, will hereafter be allowed, and the day of discharge excluded.

12. Individual pay accounts and company and staff pay-rolls should distinctly specify the exact time during which officers actually rendered service under authority, entitling to pay in the grade for which pay is claimed.

13. When accounts are hereafter rendered for service stated to have been performed from one given date to another, one of the days named will be excluded, unless it is specified or clearly shown by the form of the account that the service rendered was "inclusive" of both.—*Vol. 25, p. 763.*

535. Fractions of days are not recognized in making payments of regular pay and travel pay.—*Vol. 25, pp. 557, 558.*

CONSTRUCTION OF STATUTES.

536. Comptroller Hall decided, July 28, 1851, that the proviso in the Military Academy appropriation act for the fiscal year 1851-'52, passed March 3, 1851, viz: "That hereafter the adjutant of the Military Academy shall be entitled to the same pay and allowances as an adjutant of a regiment of dragoons," went into effect on the 1st of July, 1851, and not from the passage of the act having reference to the fiscal year for which the appropriation was made. Comptroller Brodhead decided that he looked upon Comptroller Hall's decision as reversed by the action of the cabinet in taking, contrary to the opinion of the Attorney General, the increase of salary provided to them severally in the civil diplomatic appropriation act for 1853-'54 from the date of the act, and not from the commencement of the fiscal year.—*Vol. 14, p. 370; vol. 16, p. 522; vol. 17, p. 114.*

537. All statutes go into effect from the date of their approval unless otherwise directed by law.—*Vol. 16, p. 138.*

538. An act of Congress which grants "pay" simply, does not include "emoluments."—*Vol. 21, p. 162.*

539. The law relating to the allowance of officers absent from duty exceeding six months has no retroactive effect. Act of August 3, 1861, (12 Stat., 290, sec. 20.)—*Vol. 23, p. 364.*

540. The second section of the act of August 12, 1848, (9 Stat., 303,) "concerning the pay department of the army," is considered as independent of the first section, and its provisions cannot be applied to cases arising prior to its enactment.—*Vol. 12, p. 321.*

541. It is a well-settled rule that statutes are not to be construed retrospectively, or to have retroactive effect, unless it shall clearly appear by the express terms of the law that it was so intended by the legislature. Act of March 2, 1827, (4 Stat., 227;) act of March 4, 1847, (9 Stat., 185.)—*Vol. 17, pp. 197, 198; vol. 15, p. 190.*

542. Under the act of March 3, 1849, amended by the act of March 3, 1863, payment is authorized for any of the property enumerated in these statutes, when lost, without fault on the part of the owner, as well while in the service under contract as under impressment, except when the owner agreed to take the risk.—*Vol. 31, pp. 172, 173.*

543. The act of July 4, 1864, (13 Stat., 381,) confers enlarged jurisdiction and discretion upon the Quartermaster and Commissary Generals. It is entirely within the province of these officers to pass upon the sufficiency of proof in each case of claims referred to them by this law, and if they refuse to report favorably to the Third Auditor, the accounting officers have no power of revision.—*Vol. 28, p. 392.*

544. The act of July 4, 1864, (13 Stat., 394,) to provide for the better organization of the Quartermaster General's office, is injunctive, permitting the organization to exist one year after the close of the rebellion. The act of July 28, 1866, (14 Stat., 334, sec. 15,) is pro-

hibitory, limiting the operations of the former to January 1, 1867, since the law which permits gives way to the law which forbids. The 15th section of the act of July 28, 1866, (14 Stat., 334,) therefore limits the operation of the act of July 4, 1864, (13 Stat., 394,) relating to the quartermasters' department, to January 1, 1867.—*Vol. 30, pp. 41–43. IMPRESSMENT, 977; PROPERTY SEIZED, 1754; QUARTERMASTERS' STORES, 1781.*

CONTRACTS.

- I. GENERALLY.
- II. PARTIES.
- III. CONSIDERATION.
- IV. VALIDITY.
- V. CONSTRUCTION
- VI. APPORTIONMENT AND ENTIRETY; ALTERATION.
- VII. ABANDONMENT AND RESCISSION.
- VIII. PART-PERFORMANCE AND DAMAGES.
- IX. DEDUCTION AND TEN PER CENT. WITHHELD.
- X. ASSIGNMENT.

I.—GENERALLY.

545. The power of making contracts and the incidental authority of deciding on the rules, forms, notice, and penalties to be adopted in making them, or to be provided for in case of default, are confined to the heads of departments, or such agents as may act by their authority.—*Vol. 19, pp. 313, 314, 384.*

545a. It is not the duty of the Comptroller to give his advice and opinion in regard to the formation of public contracts. The duties of the Comptroller in this matter are limited to the custody and safe-keeping of the contracts deposited with him according to law, and to the final settlement of accounts arising under them. He may also construe the terms of a contract, and if, in his opinion, it be illegal and void, he may disallow any claim based upon it.—*Vol. 19, pp. 313, 314, 384.*

546. When supplies for the navy are purchased under a contract, such contract must be filed in the office of the Second Comptroller, as required by the act of July 16, 1798, (1 Stat., 610,) before vouchers for payments can be admitted.—*Vol. 8, p. 44.*

547. All contracts must be filed before settlement of accounts arising under them.—*Vol. 16, p. 188.*

NOTE.—See law of July 16, 1798, (1 Stat., 610,) requiring contracts to be deposited with the Comptroller within ninety days after date.

548. The original contract being sometimes necessary to be used as proof, copies will not be filed in this office. Act of July 16, 1798, (1 Stat., 610, sec. 6,) and Regulations Engineer Department, page 20, par. 28, ed. 1840.—*Vol. 18, pp. 397, 398.*

549. When supplies are from necessity consumed by the contractor for their transportation, or are lost by unavoidable accident, it is proper to debit the contractor only with the price at the place of departure, disallowing any charge for the transportation of the supplies so lost or consumed.—*Vol. 18, pp. 44, 45.*

II.—PARTIES.

550. A contract by an engineer officer with a senator of the United States for the labor of his slaves on public works, whether in writing or by parol, is void under the act of April 21, 1808, (2 Stat., 486, sec. 3.)—*Vol. 15, p. 4.*

551. Settlements under a contract cannot be made on one part thereof only, but on the parts taken together; and if the intention and terms are contradictory, the intention must govern. (Story on Contracts, art. 65.)—*Vol. 20, p. 41.*

552. A public officer is not personally responsible for any contract he may make in that capacity; and whenever his engagement is of matters within the scope of his authority, it is intended to be made officially, and in his public character. (11 Howard's R., 374; Opinions Attorneys General, April 10, 1855, vol. 7, pp. 90-95.)—*Vol. 25, p. 474. DAMAGES, 653.*

553. When an officer exceeds his powers he becomes individually responsible, and cannot bind the government by his illegal contract.—*Vol. 11, p. 173.*

554. Generally the drivers of teams and vehicles for hire are vested with an implied agency of legal force, and their receipts for money in discharge of hire, &c., conclude their principals.—*Vol. 19, pp. 136, 137.*

555. No officer or agent having the power to make the contract, or who has the control of the execution of it, has any right to furnish labor or supplies under it, nor should one who is in any way interested in the performance of it.—*Vol. 19, p. 244.*

556. A quartermaster to whom is intrusted the responsibility of making a contract for the government, acts within the scope of his authority, if for the interest and protection of the government, he extends the time of delivery under the contract.—*Vol. 28, pp. 55-59.*

557. Government will settle with and pay the parties with whom it contracts, without regard to the claims of their creditors.—*Vol. 23, p. 463.*

III.—CONSIDERATION.

558. No payment is to be made to a contractor where it appears that he is liable to the United States, under the same contract, to a larger amount than the sum claimed by him.—*Vol. 12, p. 205.*

559. Payment may be properly withheld from a contractor until the amount of his liability for the non-performance of his contract shall have been ascertained.—*Vol. 12, p. 200.*

560. When a bond is given for the delivery of specific articles, at a certain time and place, in payment of a debt, the designation and tender of such articles, in accordance with the contract, is a discharge of the debt, and the property in them passes to the creditor.—*Vol. 8, p. 537.*

561. But it is doubtful whether this principle, especially so far as regards the change of property in the goods tendered, applies to contracts of purchase.—*Vol. 8, p. 538.*

IV.—VALIDITY.

562. A contract need not be under seal in order to be valid, except it be desired to make it a specialty.—*Vol. 20, p. 109.*

563. A contract is valid without witness if admitted to have been signed by the contracting parties, or where satisfactory evidence *aliunde* is produced of the making of the contract and the signatures of the parties.—*Vol. 20, p. 33.*

564. A sealed contract cannot be avoided by any subsequent parol agreement.—*Vol. 19, p. 90.*

565. Contracts must be dated.—*Vol. 30, p. 570.*

566. A voucher was presented for payment under a contract which did not contain the stipulation of non-interest on the part of members of Congress. Held that it is the interest itself of a member of Congress in a contract, and not the omission to stipulate against it, which renders contracts null and void, under the provisions of the act of April 21, 1808.—*Vol. 30, p. 134.*

567. Where a government contractor was notified by the proper officer to provide transportation for a regiment of soldiers, and the order was complied with, and a portion of the regiment embarked on board a transport of the contractor, and the remainder of the regiment, by order of the colonel, but without authority and under protest of the contractor, was put on board another vessel, it was held that the master of said vessel should have informed himself of the extent of the colonel's authority before receiving on board any of the troops; that having been notified by the contractor of his rights under his contract, he forfeited all claim to compensation for the service performed, the actual expenses of which should be paid the contractor.—*Vol. 28, pp. 740, 741.*

V.—CONSTRUCTION.

568. Where a contract was made to transport a number of horses, at a given sum per head, "*to be delivered in good order,*" and a portion of the horses died on the passage without fault of either party, no freight can be allowed for those that died.—*Vol. 15, p. 228.*

569. No parol testimony can be received at the treasury to vary, add to, or control the terms of a written contract. On this subject the legal rule applies. And where proposals for a contract are

furnished, they cannot be resorted to for the purpose of adding to a contract subsequently executed thereon, a feature not contained within it.—*Vol. 15, p. 151.*

Supra, 564.

570. No parol evidence whatever can be received to vary or control a written contract with the government. Its construction must be sought in its terms. Nor can the advertisements or proposals which preceded its execution form any part of the agreement, unless referred to and adopted in the contract itself.—*Vol. 15, p. 288.*

571. When a contract is made for a particular service, it is not in the power of any officer of the government to make additional allowances for the performance of that service beyond those specified in the contract.—*Vol. 12, p. 199.*

572. Where a contractor verbally agrees with the agent of the government to extend the time of delivery, specified in his contract, he cannot charge the government with any additional expenses thereby incurred, unless so specified at the time of agreement.—*Vol. 8, p. 539.*

573. A contractor is bound by the express terms of his contract, and debars himself from claim under it by the non-fulfilment on his part of its conditions.—*Vol. 17, pp. 32-46.*

574. A contract made subject to the approval of a third party, if that approval be withheld, is a nullity, and no legal claim arises under it, though there may be an equitable claim for the *quantum meruit* of the services, but entirely irrespective of the contract.—*Vol. 19, pp. 119, 120.*

575. When services are performed under contract, the accounting officers are restricted to the terms of the contract, and cannot pass upon the necessity of deviations and value of work done outside of the contract. When a contract provides for a heavy forfeiture in case of non-fulfilment of the contract at the time of completion of the work, and it is shown that the contract was deviated from, and extra work required by official direction, and the work received when finished, forfeiture is not thereby incurred, and payment will be made.—*Vol. 23, pp. 452-456.*

576. The master of a vessel undertook the navigation of a United States transport, he paying the expenses of manning and victualling the same. His contract stipulated that the Quartermaster General might terminate it at any time. Notice of its termination was given him at Galveston, Texas. Held that a claim for wages of officers and crew while making the passage from that port to Baltimore, the place of departure, was barred by the terms of the contract.—*Vol. 28, p. 727.*

577. A contractor who engaged to supply government with wood at a fixed price by the cord, and is directed by the military authorities to enter upon the land of another to cut it—he having no wood

of his own—is not entitled to the sum withheld by the quartermaster as the consideration due the owner of the land on which the wood was cut.—*Vol. 29, p. 505.*

578. Where a contractor agreed to build a bridge for a United States military railroad, and by the terms of the contract was to be reimbursed in case his tools, supplies, materials, &c., were captured by the enemy; which tools, &c., were, in fact, so captured and destroyed. Held that the government was bound to allow the claim as valid under the contract.—*Vol. 28, p. 204.*

579. A contractor agreed to transport government stores from Fort Leavenworth, Kansas, to Salt Lake City. One of the conditions of the contract was that the contractor should be allowed \$5 for each team per day, for stoppage, if delayed beyond two days by official orders, or by any act of the government or its agent. Claim was made for detention of 12 teams, which were stopped by order of the quartermaster, and through no fault or negligence of the contractor. Held that by the terms of the contract the government is liable for the time of detention, and at the rate specified.—*Vol. 30, pp. 218–220. POST, 599. IMPRESSMENT, 976, 977.*

VI.—APPORTIONMENT AND ENTIRETY; ALTERATION.

580. The master of a steamer claims *pro rata* compensation under his contract to transport troops from Jefferson barracks to Fort Leavenworth, he having been obliged by the low state of the water to stop short of his destination. Held that when a contract for transportation is an entire contract, no recovery for part performance upon that alone could be had, but upon equitable principles the contractors are entitled to payment *pro rata itineris peracti*.—*Vol. 19, p. 166.*

581. The contract for conveyance of persons or goods is, in its nature, an entire contract, and, unless it be completely performed by delivery at the place of destination, the passenger, freighter, or consignee will not be subject to any payment whatever.—*Vol. 19, pp. 183, 184.*

582. Where a contract stipulated that payment should be made in lawful currency, or, if paid in certificates of indebtedness, the current rate of discount at the time of payment to be added to the price, and the fact appeared that the officer acted for the interest of the government in inserting the clause, it was held that the contract was entire and made in good faith, in violation of no statute of the United States, and that the discount was a part of the agreement.—*Vol. 28, p. 736.*

583. When a contract has been modified, the accounting officers are entitled to be informed both of the facts and the reason for so doing.—*Vol. 18, pp. 189, 190.*

VII.—ABANDONMENT AND RESCISSION.

584. No claim can arise out of the breach by the government of a contract to accept goods contracted for, where it appears that the claimant never procured the goods, or had them ready for delivery, in pursuance of his contract, unless he has incurred expenses in preparing for such delivery.

A mere offer to fulfil, without having the means to do so, is no fulfilment of such a contract, even though the offer be refused.—*Vol. 8, p. 573.*

585. Messrs. Mordecai & Co. contracted with the United States to transport a detachment of soldiers from Key West to New York. They refused to take passengers from Havana to New York, in order to reserve room in their vessel, the Isabel, for the fulfilment of their contract. On arriving at Key West, in accordance with the terms of the charter-party, it was found that the detachment had already gone. Held that the United States were liable.—*Vol. 20, p. 43.*

586. If a contractor fails to perform his contract, and his sureties go on and fulfil it, payment may properly be made to them.—*Vol. 18, pp. 154, 344, 399, 401.*

587. When contracts have been suddenly terminated by the government while in process of being performed, it is the uniform practice and policy to make liberal allowances for services and expenditures actually laid out and incurred in the legitimate and *bona fide* endeavor to perform the contract. Case of Doyle, Solomon & Brothers.—*Vol. 25, pp. 647–649.*

588. Where a party, who is under contract to furnish fresh beef to the use of a military post, and the regular garrison is unexpectedly increased by the arrival of troops in distress en route for California, is unable to furnish sufficient supplies in consequence, and the commander of the post refuses to receive supplies under the contract, but purchases of a former contractor, it was held that the ordinary number of the garrison was to be supplied under the contract; that the original contractor should have been allowed to fill his contract, and that suit for non-fulfilment thereof would not be justifiable either in law or equity.—*Vol. 19, pp. 351, 352.*

589. Where a person was employed as the regular agent of the quartermasters' department to hire canal barges, and it was stipulated that his commissions should be paid by the government, he is precluded from receiving any consideration for his services from the owners of the barges thus hired. And the fact appearing that a consideration was received by him from the owners, his contract with the government is thereby annulled, and the amount of his commissions cannot be determined by its terms.—*Vol. 29, pp. 185, 186.*

VIII.—PART-PERFORMANCE AND DAMAGES.

590. Contractors are not, in point of law, entitled to claim for a part performance, compensation as for a full performance of their contract, when the government interferes to prevent a full performance. But they should be made good for all expenses and losses which are the direct and legitimate consequences of the interference of the government in the performance of their contract.—*Vol. 14, p. 158.*

591. A contractor engaged to transport all the army stores that should be required from one post to another, and to receive a stipulated price per ton therefor; troops being ordered to move, the quartermaster, by order of the commanding officer of the post, directed the contractor to furnish at the post, at a given time, a certain number of wagons, for the purpose of transporting stores under his contract; the wagons were furnished, but the order for the movement of the troops having been countermanded, no transportation was required. Held that the contractor should be repaid his expenses in bringing the train together.—*Vol. 15, p. 2.*

592. It is not in the power of the executive branch of the government to liquidate and pay damages which a contractor may have sustained by reason of a violation of the contract on the part of the United States. If he has been damnified, Congress alone can redress the injury.—*Vol. 9, p. 342.*

593. Where actual and necessary expenses have been incurred and lost by a contractor in carrying out, in good faith, a proper contract with the quartermaster's department, and the contract has been subsequently broken off by the government before the party became entitled to payment under it, the quartermaster's department is authorized to reimburse to the contractor the expenses so incurred and lost.

But no allowance can be made by that department in such a case for the loss of anticipated profits in the completion of the contract. Such claim, if it exists, must be the subject of an application to Congress.—*Vol. 15, p. 340.*

594. Congress alone having the power to redress the injury when an individual has been damnified by the government through its officers, any contract regarding the payment of damages is illegal and void; and a military officer cannot make a contract binding on the United States to pay for damage, trespass, and conversion. Payment in such cases must be previously authorized by Congress, as such expenditures are not in the usual estimates, nor within the scope of ordinary appropriations.—*Vol. 19, pp. 472, 473.*

595. Damages arising from a non-fulfilment of a contract on the part of the United States cannot be allowed by accounting officers, but must be referred to Congress. The Comptroller and Auditors of the Treasury have no general authority to award damages as for tort

or contract broken; their jurisdiction is confined to matters of account arising *ex contractu*, or by operation of law. Opinions Attorneys General, July 2, 1832, ed. 1841, p. 882; Opinions Attorneys General, May 29, 1844, vol. 4, p. 327; Opinions Attorneys General, November 13, 1852, vol. 5, p. 630; Opinions Attorneys General, June 7, 1855, vol. 6, p. 516; act of May 21, 1838, (6 Stat., 716;) resolutions of March 3, 1843, (6 Stat., 907;) resolutions June 26, 1848, (9 Stat., 747.)—*Vol. 17, pp. 508–510; vol. 30, p. 17.*

596. The anticipated profit of contractors are not allowable.—*Vol. 16, pp. 13, 266.*

597. When contractors have become legally liable for a breach of their contract, Congress only has the power to relieve them from that liability.—*Vol. 13, p. 340.*

598. B contracted with a United States quartermaster to transport building materials from Jacksonville to Fort Capron, Florida, and then declined to fulfil his contract. The quartermaster then made a contract with another person, who also failed to perform it; afterwards, on being requested by the quartermaster to enter into the execution of his contract, B allowed 12 days to pass before notifying him of his intention of fulfilling his contract; the quartermaster then replied that the materials were not needed, and that the transportation would not be required. Held that the claim for expenses and losses incurred by B in preparing for the fulfilment of his contract after the last notice of the quartermaster, was invalid; that the abandonment of the voyage arose from the *laches* of the contractor, and that the general rule applies, that an action for wrong cannot be maintained by the party when the injury has been the necessary result of his own acts.—*Vol. 19, pp. 265, 266, 384–386.*

599. A and B entered into contract with a United States quartermaster, by the conditions of which they were to deliver within its lines beef cattle for the use of the army. While acting under the orders of superior officers they suffered a loss of a portion of the herd after arriving within the lines of the army. Held that the United States were liable for the loss. And where other property of A and B was captured by the enemy while they were fulfilling their contract under the orders of military authority, which contract specially provided for the payment of losses thus incurred; Held that the United States were, under the contract, responsible for the loss. And when the United States, under the contract, agreed with A and B to transport by water the cattle provided by them, and the cattle were landed without due notice to A and B, and, in consequence, a part of the drove strayed, and were captured or lost; Held that A and B were not precluded from compensation for the loss.—*Vol. 25, pp. 770–776. Ante, 579.*

600. When the contract stipulated that a detention or delay at any time or place exceeding two days, under the orders of a proper officer, should be paid for at the rate of \$5 per diem for each team, and claim was made for delay under the following circumstances :

A captain and commissary of subsistence notified the agent of the claimant that he required a certain amount transported to a given point in 20 days from that date. Five days afterwards the officer countermanded the order. Held that the rule laid down in paragraph 593, Comptroller's Digest, is applicable, and settlement was made according thereto.—*Vol. 31, pp. 109, 110.*

IX.—DEDUCTION OF TEN PER CENT. WITHHELD.

601. Government may retain a sufficient amount out of the contract price of work to insure fulfilment of the contract when its terms do not forbid such retention.—*Vol. 25, pp. 411, 412.*

602. When a contract stipulates that ten per cent. of the amount of compensation shall be withheld by government until the completion of the work, a disbursing officer has no right to pay over such percentage until the fulfilment of the contract. When such contracts have been made, the rights of the parties under them become at once vested, and it is not in the power of the agents to modify or release them. In settling the accounts and ascertaining the balance the accounting officers must be guided by the instrument itself. Neither the Auditor nor Comptroller can absolve contractors from any of the stipulations contained in their contracts, however severely they may be supposed to bear upon them. Nor in such cases can the amount be paid over on depositing United States bonds as security. The power to give relief belongs to Congress.—*Vol. 2, p. 481; vol. 22, pp. 495-499.*

603. Where the United States received no damage by the non-compliance by the contractors with the exact terms of the contract, payment of the ten per cent. withheld may properly be made. But where it was alleged that the causes for which articles were rejected had been disregarded in other departments for which they had furnished similar goods, the plea was adjudged bad, and it was held that if the contractor furnished articles inferior in quality to the kind stipulated in his contract, and improperly received prices to which he was not entitled, the United States have a just claim for the difference in cost which may equal the amount withheld upon his contract.—*Vol. 28, p. 127.*

604. In case of the non-fulfilment of the conditions of a contract by the contractor, it was held that the quartermaster in entering into a contract with another party to furnish the stores, at a higher rate, waived his right under the contract to supply the deficiency by purchase in the open market at the expense of the contractor, but that the government might have damages on covenant broken, and that the 10 per centum forfeiture stipulated in the contract, provided delivery be not made within a given time, was properly withheld.—*Vol. 28, pp. 381, 382.*

605. A contract to furnish knapsacks, stipulating retention of 10

per cent. on payments for non-compliance, expired in December, but deliveries were still made until March following, when by order of the Quartermaster General they were stopped. The contractor claims the payment of the ten per centum withheld by government, on the ground that the delay to deliver arose from the large number of rejected articles. This was held not to be valid, but indicating, if anything, a design to impose upon the government, at full price, an article of inferior quality and value. The forfeiture of ten per cent. was regarded as fairly coming within the contract.—*Vol. 28, pp. 96, 97.*

606. A contractor having failed to deliver the full amount of the instalment required at each delivery according to the terms of his contract. Held that the forfeiture of ten per centum specified in the contract in case of failure or non-delivery at the time, was properly withheld by the quartermaster.—*Vol. 28, pp. 27, 36.*

607. Where ten per centum of the consideration on the delivery of the first instalment was withheld by the government, agreeably to the terms of the contract, and upon notice by the contractor that he was ready to deliver a second instalment, the quartermaster replied that the time for delivery had expired, and that the supplies were not needed. Held that upon principles of equity, the government having received no injury from the non-delivery, the contractor should be paid the ten per cent. See *Opinions of Attorneys General*, Oct. 25, 1858, vol. 9, p. 210.—*Vol. 31, p. 361.*

X.—ASSIGNMENT.

608. An assignment of the payments due under a contract with the United States, accompanied by due notice to the proper officer, is binding upon the government, if not prohibited by the terms of the contract. And if the contractor has subsequently just ground for invalidating his assignment, he must proceed in the same manner as though the contract assigned were with an individual. But the mere rescinding of such an assignment is not sufficient notice to the government.—*Vol. 15, p. 294.*

609. No assignment of a contract will be recognized by the accounting officers of the treasury, unless such assignment shall have been approved by the chief of the bureau with whom it was made.—*Vol. 14, p. 116.*

610. The original parties to a contract and bond are holden for its faithful execution, although they may assign the same to others, who are to be considered merely as the agents of the original obligors.—*Vol. 18, p. 399-401.*

611. When a contractor holding an approval bill for beef delivered, indorsed the same in blank, and signed duplicate receipts in blank, and gave the bill to third parties in payment of cattle, and the commissary declined on technical grounds to make payment, and in the mean time the contractor died. Held that payment was justly

due from the United States, the transfer valid, and the title to be in holders of the receipted and indorsed account.—*Vol. 19, p. 378.*

COPIES.

612. By the act of March 3, 1797, (1 Stat., 513, sec. 2,) copies of bonds, contracts, &c., certified by the register, under the seal of the department, may be annexed to transcripts for suit, and be held of equal validity as the original, except the defendant shall plead *non est factum*, or, on notice to the court, verified by oath, &c., the court shall require the original papers.

By the act of February 22, 1849, (9 Stat., 346,) all books, papers, documents and records in the departments may be copied and certified under seal in the same manner as those in the State Department, with the same force and effect.

The act relative to the State Department, September 15, 1789, (1 Stat., 69,) makes copies under seal of the department equal evidence to the original.—*Vol. 27, p. 133.*

613. When originals cannot be furnished, copies duly certified as true by a disinterested officer may be accepted. If no other officer than the payor or payee is at the post when payment is made, both must certify to that fact, and also to the correctness of the copy.—*Vol. 28, p. 371.* DISBURSING OFFICERS, 748.

COURT OF CLAIMS.

614. The Court of Claims has no power to overrule or modify the action of the accounting officers.—*Vol. 20, p. 332.*

NOTE.—See act of February 24, 1855, (10 Stat., 612,) establishing the Court of Claims; also, the act of March 3, 1863, (12 Stat., 765,) amending the law establishing the court. DELINQUENT OFFICERS, 658.

COURTS-MARTIAL.

- I. GENERALLY.
- II. OF THE ARMY.
- III. OF THE NAVY.
- IV. WITNESS.
- V. JUDGE ADVOCATE

I.—GENERALLY.

615. In all cases of claims for attendance on courts-martial or courts of inquiry, the order for holding such court, showing its object, must be produced; and the accounts for attendance as members or witnesses, showing the dates and times of such attendance, their places of residence, and the distance travelled, must be certified by the recorder or judge advocate.—*Vol. 2, p. 329.*

616. An officer who attends a general court-martial or court of inquiry, convened by authority competent to order a general court-martial, will be paid, if the court be not held at the station where he is at the time serving, one dollar a day while attending the court and travelling to and from it, if entitled to forage, (and one dollar and twenty-five cents a day if not entitled to forage,) and one dollar and twenty-five cents in addition when acting as judge advocate, or recorder, for every day he is necessarily employed in the duty of the court. Revised Army Regulations, par. 1137, ed. 1863.—*Vol. 25, p. 537.*

617. The sentence of a court-martial operates as the decree of a court of competent jurisdiction; and when the fine imposed on the criminal is directed to be paid to another party, the receipt of the person to whom it is ordered to be paid will be a valid and sufficient voucher to the disbursing officer.—*Vol. 25, pp. 294, 295.*

618. No appeal can be entertained by the accounting officers in respect of the findings of a court-martial. The fact of the judgment, and not the legality of it, is all that can be taken into consideration.—*Vol. 28, p. 202.*

619. The accounting officers have no legal power to review or annul the finding of a court-martial; all proper action of that kind being within the prerogative of the President or of the Secretary of War, acting by his authority.—*Vol. 28, p. 274.*

620. And on general principles of law a man who is rendered incapable, through his own misconduct, of fulfilling the stipulations of his contract of enlistment, can claim nothing under that contract, but forfeits what is due, in the same way that a servant forfeits wages when discharged for immoral conduct, habitual disobedience, &c.—*Vol. 29, p. 162. PAY, VI, 1312.*

621. The sentence of court-martial depriving the convicted person of a part or of all his pay while undergoing imprisonment, will be respected by the accounting officers in settling the account of the same.—*Vol. 29, p. 31.*

622. There is no law, regulation, or precedent, whereby an officer is entitled to per diem allowance of \$1 25 while attending his own trial before a court-martial.—*Vol. 26, p. 39.*

623. Per diem allowance will be granted when the officers charging it shall certify that it is for necessary expenses incurred in attending the court-martial, in obedience to orders.—*Vol. 18, p. 302.*

II.—OF THE ARMY.

624. The twentieth section of the act of January 11, 1812, (Stat., 674,) provides that a commissioned officer, for attending general courts-martial, shall be allowed a reasonable compensation for any extra expenses he may incur for travel and attendance, not exceeding \$1 25 per day to officers who are not entitled to forage, and not exceeding \$1 per day to such as are entitled to forage.—*Vol. 5, p. 91.*

625. By the regulations in force in the year 1834, an officer attending a court of inquiry as a member is not entitled to any allowance beyond that of transportation of baggage.—*Vol. 5, p. 31.*

626. The laws of March 3, 1835, (4 Stat., 757, sec. 2,) and March 3, 1839, (5 Stat., 349, sec. 3,) prohibit a per diem allowance to an officer while travelling to and attending court-martial.—*Vol. 10, p. 315.*

627. Under the laws of 1842 no per diem allowance to officers for attending courts-martial, or for any other service, is authorized.—*Vol. 11, p. 191.*

628. No per diem allowance for travelling or attendance, as a member of a court of inquiry, is authorized by law or regulation.—*Vol. 9, p. 176.*

NOTE.—The above decisions, Nos. 626, 627, 628, are no longer in force.—(See Revised Army Regulations, par. 1137, ed. 1863.)

a. Officers who are members of a court-martial held at a post where they are on duty, or leave of absence, are not entitled to any per diem allowance, when no other additional expense is shown to have been necessarily incurred by them in the discharge of that service.—*Vol. 15, p. 285.*

b. The per diem allowance for attendance on courts-martial, to officers entitled to forage, cannot in any case exceed one dollar per day.—*Vol. 15, p. 296.*

c. Though members of a court-martial entitled under existing laws to a per diem allowance may receive it as well for the time spent in travelling to and from the court as in actual attendance upon it, yet if the journey, or any part of it, is performed upon other duty, so as to entitle them to transportation at the rate of ten cents per mile, they cannot be allowed the per diem for the time occupied in so travelling.—*Vol. 15, p. 296.*

629. It was decided by Comptroller Parris, August 12, 1847, that an officer residing at Georgetown, whose office was located at headquarters, in the War Department, was not entitled to per diem for sitting as a member of a court-martial or of inquiry, at the Washington arsenal.—*Vol. 27, p. 143.*

629a. Any officer on duty, with troops at the place of court-martial, is in the condition of an officer at a military post, and not entitled to per diem.—*Vol. 27, p. 143.*

630. Officers serving on court-martial at the post where they are on duty, or leave of absence, are not entitled to per diem allowance when they incur no additional expense thereby. Acts of January 11, 1812, (2 Stat., 674, sec. 20,) and January 29, 1813, (2 Stat., 796, c. 14.) Regulations Quartermaster's Department, par. 986.—*Vol. 18, p. 285.*

631. Officers, whether on the active or the retired list, are entitled to the same travelling allowances for attending court-martial.—*Vol. 30, pp. 681, 682.*

632. Per diem for attendance at a court-martial is not an emolu-

ment, but a reimbursement of expenses. Act of March 16, 1802, (2 Stat., 136, sec. 22.) Army Regulations, par. 986 and 1023.—*Vol. 18, p. 302.* PAY, I, c, 800, 273.

633. Officers are considered on duty when attending courts-martial either as members or witnesses, and pay allowed accordingly.—*Vol. 22, pp. 128, 129.*

634. An officer who is taken sick on his journey to attend a court-martial, is entitled to his per diem allowance for the time he is detained by such sickness.—*Vol. 10, p. 181.*

III.—OF THE NAVY.

635. The members of a naval court-martial are considered as on duty from the time of reporting until the dissolution of the court by order of the department, and are to be paid accordingly, though they may have been in the mean time discharged by the president of the court, and reconvened by the department.—*Vol. 14, p. 274.*

636. A person acting as a provost marshal to a naval general court-martial is not entitled to a per diem allowance of \$1 25.—*Vol. 26, p. 134.*

IV.—WITNESS.

637. Officers of the army, for their attendance as witnesses before a naval court-martial, in obedience to an order from the War Department, are entitled to such compensation only as they would have been entitled to if their attendance had been before a military court-martial.—*Vol. 14, p. 400.*

638. Navy officers attending army courts-martial as witnesses, under orders from the Secretary of the Navy, are entitled to navy allowances for travelling and attendance, payable from the army appropriation.—*Vol. 15, p. 303.*

NOTE.—See Nos. 644, 2263, modifying the last two decisions.

639. One who attempts in good faith, and with reasonable prospect of success, to obey a summons to attend a court-martial as a witness, will be entitled to his expenses if he accidentally fails. But if the summons reaches him at so late a day, or if he delay so long after he receives it as to leave no reasonable ground to suppose that he can arrive in season to testify, the expenses of his journey will not be allowed.—*Vol. 15, p. 476.*

640. Citizens, when attending naval courts martial as witnesses, are entitled to the allowance provided by the regulations.—*Vol. 8, p. 364.*

NOTE.—Paragraph 1139, edition 1863, General Regulation of the Army, is amended to read as follows:

“A citizen witness shall be paid his actual transportation or stage fare and three dollars a day while attending the court, and while

travelling to and from it, counting the number of days actually required to perform the journey, in no case at a less rate than at 50 miles a day. When the witness is in attendance in more than one case, he will be allowed mileage and per diem but for one."—*General Order War Department, No. 278, November 7, 1864.*

641. A citizen witness is entitled to the same allowance when ordered before a garrison or regimental court-martial as when ordered before a general court-martial.—*Vol. 30, pp. 681, 682.*

642. A soldier when discharged and entitled to travel-pay to his residence, may also be paid per diem and travel pay as witness before a court-martial, if properly summoned, while en route to his residence.—*Vol. 17, pp. 210, 211.*

643. Laundresses are entitled to allowances given by regulations to "citizens" when they are witnesses before a court-martial. No witness can be paid for any period before he has been regularly summoned, and only while recognized by the judge advocate as having been in attendance.—*Vol. 19, pp. 40-42.*

644. Officers of the army, and witnesses before a naval court-martial, and officers of the navy, witnesses before an army court-martial, are entitled to their actual and necessary expenses in addition to their regular compensation, as while so in attendance they are, in general, still subject during such temporary absence to their expenses of subsistence and mess bills at their stations, or on board ship; and as the object is to reimburse them the actual amount of increased expenditure they incur from being used by the government as witnesses, the cost of boarding, being an additional expense, ought to be paid by the United States.—*Vol. 27, pp. 25, 26.*

V.—JUDGE ADVOCATE.

645. Citizen judge advocates of naval courts-martial are to be allowed ten dollars per day while employed in making preparation for and attending the trial, and ten dollars for every fifteen pages of record; each page to contain at least 180 words.—*Vol. 8, p. 109.*

NOTE.—See letter of Fourth Auditor to H. M. Morfit, June 3, 1830, and of the Secretary of the Navy, May 15, 1832, and August 19, 1834.

646. In case of De Byrne, judge advocate, it was held that extra compensation for expenses actually incurred can be allowed for no period when not engaged in travelling or sitting on court-martial. Paragraph 1023 Army Regulations, ed. 1841; act of March 16, 1802, (2 Stat., 136, sec. 22.)—*Vol. 19, p. 492; vol. 20, pp. 285, 286.*

647. Where the per diem provided by paragraph 1138, Army Regulations, was claimed by an assistant judge advocate, and it further appeared that the office of assistant judge advocate was unknown to the laws and the regulations, held that neither the disbursing or accounting officers of the government have authority

to allow additional compensation in such a case.—*Vol. 28, pp. 585, 586.*

648. A clerk to a judge advocate of a naval court-martial is allowed to assist in preparing the record, and his compensation is fixed at three dollars per day while actually employed, if he holds no other situation in which he receives pay from government.—*Vol. 14, p. 402.*

649. A judge advocate of a court-martial is entitled to the per diem for services while necessarily employed by the duties of said court, that is, while summoning witnesses, preparing charges, &c., prior to the meeting of the court, during its session, and subsequently in making up the record, &c. He, like all other officers, is entitled, in addition, to the per diem in lieu of extra expense actually incurred only while travelling, and while the court is in session. Act of March 10, 1802, (2 Stat., 136, secs. 21, 22.) Opinions Attorneys General, August 20, 1823, vol. 1, p. 618. Army Regulations, par. 1023, 1024.—*Vol. 19, pp. 490-492.*

650. The judge advocate of a military commission is not entitled to the allowance provided for the judge advocate of a court-martial.—*Vol. 24, p. 192.*

DAMAGES.

SEE *Claims for Damages.*

651. The ship *Columbo* was taken in tow by a government tug by order of the quartermaster at Port Royal, and under protest of the master. While under way to the anchorage the vessel was driven by the wind into shallow water and grounded. The vessel was not under charter-party of affreightment. Held that it was a case of unliquidated damages and not within the scope of the accounting officer's authority to adjudicate.—*Vol. 24, p. 662.*

652. Damages sustained by the owner of a vessel under charter, from the improper conduct of the United States collector at the port of delivery, must be the subject of an application to Congress.—*Vol. 15, p. 204.*

653. Where a set of wrecking tools were obtained from the owner by an employé of the quartermaster's department without the order or authority of the quartermaster. Held that the government was not bound by the unauthorized act of a person in its employment, and no claim for damages could be allowed, but as a matter of equity a reasonable compensation for their use should be paid the owner.—*Vol. 30, p. 107.*

DELINQUENT OFFICERS.

654. In all cases where balances are due the United States by officers out of service they should not be immediately reported as

delinquent; but be called upon to pay into the treasury, or otherwise account for such balances due, and in default of promptly responding, the sureties on their bonds will be called upon to refund.—*Vol. 28, p. 78.*

655. The practice of reporting as delinquent the names of officers, is discontinued, whenever such officers, though supposed to be in service, have been for three months or more without change in their accounts, and apparently delinquent for sums so trifling as to be worth less than the cost of the clerical labor involved in the process of reporting, and too small to be worth ordering stoppage of their pay in order to collect.—*Vol. 28, p. 78.*

656. Under the law of July 17, 1862, (12 Stat., 593,) the reports made by this office of delinquent officers to the Secretaries of the departments in which they are serving, are based upon the information given by the Third Auditor, who is required to report all disbursing officers whose monthly accounts are delayed for more than forty days after the expiration of each month.—*Vol. 28, p. 441.*

657. The third section of the act of May 18, 1826, (4 Stat., 174,) provides that any deficiency of public property on the final settlement of an officer's account shall be charged against the delinquent, and deducted from his monthly pay, unless he shall show, to the satisfaction of the Secretary of War, by one or more depositions, that the deficiency was the result of unavoidable accident. In such a case the accounting officers have no power to direct an allowance to be made, the Secretary of War alone having the authority.—*Vol. 16, p. 65.*

658. The act of May 9, 1866, (14 Stat., 44,) gives the sole jurisdiction to the Court of Claims to hear and determine the claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, or his administrator or executor, for relief from responsibility on account of losses of government funds, vouchers, records, and papers. And by construction of law, the words vouchers, &c., include "property accountability," when vouchers relating thereto are lost. And assistant quartermasters and other bonded officers must apply to the Court of Claims for relief in all cases of loss of vouchers relating to property accounts.—*Vol. 29, pp. 333, 334.*

NOTE.—The act of July 28, 1866, (14 Stat., 345,) confers jurisdiction upon the accounting officers in such cases relating to disbursing officers of the navy and marine corps.

DEMURRAGE.

SEE *Charter party—Freight—General Average.*

659. Where there is any unreasonable delay in the delivery of a cargo, and such delay is occasioned by the consignee or his agents, the vessel may legally claim indemnity, though no provision for demurrage is inserted in the contract.—*Vol. 12, p. 274.*

660. Although demurrage cannot legally be claimed by the owners, yet if it clearly appear that an authorized agent of the United States detained the vessel beyond the time necessary to discharge cargo, a reasonable allowance for demurrage will be made, and this upon the principle that the United States do not require the services or property of individuals without just compensation.—*Vol. 25, pp. 153, 154.*

661. Demurrage, strictly speaking, is only allowable when it is expressly provided for in the charter party. In cases where the time to be allowed for discharging the cargo is specified, but no rate of compensation for additional delay is fixed, the owners of the vessel are entitled to damages for such delay, in the nature of demurrage, and to be estimated on the same principles.

But these damages must be confined to the particulars usually included in demurrage, and cannot be extended to compensation for remote consequences produced in the execution of other and subsequent contracts by the delay.—*Vol. 15, p. 204.*

662. A disbursing officer has no right to pay demurrage according to a certified number of days, inserted by an officer, (after the fact,) when the elements of right calculation had been otherwise given.—*Vol. 19, pp. 539, 540.*

663. A party cannot maintain a plea of demurrage, except on the basis of express conditions of a contract, nor can he be reimbursed for damages without the sanction of Congress. Every contract is founded upon mutual agreement of parties, carrying with it reciprocal liabilities.—*Vol. 20, p. 201.*

664. A vessel having arrived at the port of destination, and while discharging her cargo of government stores, was seized by the proper officers of the United States for military purposes. While so seized and employed the vessel was stranded. Afterwards, having been got off, she proceeded to port in order to make repairs. The United States paid the freight, in the first instance, and demurrage, according to the terms of the bill of lading while thus employed, up to the date of the surrender of the vessel to the agent of the owners. The claim is now presented for demurrage from the date of surrender till completion of repairs, together with costs of such repairs. Held that the injuries sustained by the stranding of the vessel, the time spent in making the voyage from the place of stranding to the port of repairs, the detention there in making the repairs, and the expense of the same, are the proper elements in estimating the losses; and that the measure of damages which the government is bound to pay is the wages and provisions of the crew while making the voyage and during the detention, and two-thirds of the cost of repairs.—*Vol. 26, pp. 73-77.*

665. Demurrage will not be allowed unless the facts appearing in evidence make out a clear and certain case.—*Vol. 23, pp. 401, 402.*

666. The Ocoola steamship was chartered for fifteen days, with per diem allowance over that time. She proceeded to Fort Mon-

roe, discharged a part of her cargo, and went to sea with the balance on board. The vessel was wrecked the 15th day. Held that the charter for fifteen days should be paid, but not the demurrage.—*Vol. 24, p. 49.*

667. The necessity of detention being approved by the Quartermaster General, demurrage will be allowed.—*Vol. 24, p. 340.*

668. By the general rule of maritime law the master having a vessel in charge is the agent of the owners and authorized to act in all matters within the scope of his appointment. The extent to which the owners are bound in any particular case may usually be ascertained by applying the laws governing principal and agent.—*Vol. 25, pp. 302, 303.*

669. A vessel having been seized by the military authorities and used as a hospital ship, was, when discharged from such service, compelled by competent authority to go into quarantine. A claim for demurrage was allowed, for the reason that through no fault or negligence on his part was the owner deprived of the services of his vessel while undergoing quarantine.—*Vol. 29, p. 246.*

DESCENT AND DISTRIBUTION.

I. CLAIMS OF DECEASED PERSONS.

II. CLAIMS OF DECEASED SOLDIERS AND SAILORS.

I.—OF DECEASED PERSONS.

670. In the case of a gratuity granted by act of Congress to the relatives of deceased persons, the collateral relatives, whether of the whole or half blood, should participate equally in the order pointed out in the act. Opinion of Attorney General Berrien and of Attorney General Toucy, September 7, 1848. See also section 267.—*Vol. 3, p. 254.*

671. A half sister, as next of kin, applying for arrears of pay due decedent, a United States sailor, must prove that he left neither wife nor child. The identity of decedent, in whose name the claim is made, must be proven. When the parents of decedent live in a foreign country, the affidavit of two disinterested witnesses, testifying that of their personal knowledge decedent left neither wife or child, is required.—*Vol. 21, p. 369.*

672. Payments of "extra pay" due deceased persons can only be made to their legal representatives. Act of March 3, 1853, (10 Stat., 220.)—*Vol. 19, p. 504. PAY, VII, 1334.*

673. When the amount due from the United States to a deceased person has been paid to one claiming to be the only brother of the deceased, upon proof that was then deemed satisfactory that he was the only brother, and that there was no widow, and another claim for the money is presented by a person claiming to be the widow, the clearest evidence should be required of the fraud and perjury of

the proof on which payment was made, of the absence of all knowledge of it on the part of the second claimant, and of her right as the widow, before the money is paid again.—*Vol. 15, pp. 11, 173.*

674. Questions as to the right of the whole or half blood to inherit sums other than gratuities due deceased persons will be determined in conformity with the law of the State of which the deceased was a citizen.—*Vol. 13, p. 131.*

675. The indebtedness of the United States to a party deceased is an asset of his estate, and can be paid to his legal representatives. Funeral expenses are generally paid before debts; but no debtor of the estate has a right to prefer a creditor.—*Vol. 19, p. 57.*

676. Balances due from the United States to deceased persons are payable at the treasury, and not by disbursing officers.—*Vol. 19, pp. 245, 246.*

677. *Seem*, that a mechanic died in the employ of government, leaving a small balance due him, and for that reason administration was waived, and the widow, on proof, allowed to receipt for payment.—*Vol. 19, p. 563; vol. 25, pp. 343, 483, 484.*

II.—CLAIMS OF DECEASED SOLDIERS AND SAILORS.

678. Arrearages due a deceased soldier may be paid, without administration, to wife, children, brothers, sisters, father, and mother in their order; but not to more remote heirs.—*Vol. 15, p. 186.*

679. A brother of a deceased soldier inherits the estate to the exclusion of an uncle.—*Vol. 13, p. 216.*

680. Arrears of pay and extra pay may be legally paid to the mother of the deceased soldier, he being an illegitimate son, and leaving neither wife nor child.—*Vol. 13, p. 376.*

681. An illegitimate child is heir to its mother, and the mother is heir to the child. And when such child dies, leaving no wife nor children, the mother is entitled to the arrears of pay. See Kent's Commentaries, vol. 4, p. 413, 414; 5 Wheaton R., 261; Decisions of the Secretary of the Interior, July 5, 1850, No. 95, p. 528; Pension Laws, Mayo & Moulton's ed., 1852, and December 1, 1851, No. 129, p. 546; *id.* act of July 24, 1861, (12 Stat., 273.)—*Vol. 23, p. 520.*

682. Back pay and bounty will be paid to an illegitimate child in preference to more remote connections; and the mother of an illegitimate child, a soldier, who died, leaving no widow or child, will inherit his back pay and bounty.—*Vol. 31, pp. 57, 58.*

683. Officers or soldiers dying in a United States hospital, and pay being claimed for the period, such period covering a pay day, a certificate from the Paymaster General or other proof should accompany the claim, that the decedent was not paid in hospital.—*Vol. 25, p. 639.*

684. Arrears of pay due deceased officers or soldiers must be paid to heirs or legal representatives only.—*Vol. 17, pp. 135-137, 333, 520.*

685. The arrears of pay due a deceased soldier may be paid to a person standing *in loco parentis*.—*Vol. 28, p. 702.*

686. The law giving an allowance of half the monthly pay of soldiers and officers to the widows, &c., is construed to mean "pay proper," and not to include commutations or extra allowance depending on contingencies. Act of January 29, 1813, (2 Stat., 795, sec. 10.) Act of March 2, 1827, (4 Stat., 227, sec. 2.) Act of March 3, 1853, (10 Stat., 764, sec. 2.)—*Vol. 21, pp. 321, 322.*

687. Arrears of pay being alike due to resident and non-resident heirs, the father living in Ireland, and being next of kin, must make legal assignment, to enable the sister of deceased to receive payment.—*Vol. 25, pp. 62, 63.*

688. The legal heir to the arrears of pay due a deceased soldier, residing in a foreign country, must have an attorney in the United States to whose order the certificate can be paid.—*Vol. 28, p. 464. DOMICIL, 777.*

689. An officer died leaving two brothers, his only heirs, one of whom had been in the rebel army, and the other had abandoned the support of his family. The disloyal brother waived his claim for his portion of the arrears of pay due decedent in favor of the family of his brother, but it was held that the legal representatives only are entitled to receive the arrears, each brother inheriting a moiety, and that as the law forbids payment of any credits or dues from the government to disloyal claimants, a moiety only can be paid the loyal heir.—*Vol. 29, pp. 583, 584.*

690. The act of July 24, 1861, (12 Stat., 273,) granting relief to the widows and orphans of those lost in the Levant, fixes the *time* to which the accounts of decedents for back pay should be stated, and in addition gives the heirs twelve months' extra pay. And for this extra pay the words of the statute must be literally construed to mean pay proper, and no more.—*Vol. 25, p. 237.*

691. A. B., the heir of C. D., made claim for arrears of pay alleged to be due the latter at the time of his death in 1804, for services in the navy. The papers of the vessel on which he served having been lost, the only evidence of the claim was a "memorandum of arrearage" purporting to have been taken from the original rolls. Held that this "arrearage abstract" is not an official document, but simply a memorandum, and although it may show that an amount was due in 1804, it is not satisfactory evidence that that amount has not been paid.—*Vol. 30, pp. 385, 386. WILLS, 2251; BOUNTY, II, 225; EXECUTORS AND ADMINISTRATORS, 828, 829, 830, 845; PAY, VII, 1334.*

DESERTER.

I. ARREST.

II. PAY.

III. BOUNTY.

I.—ARREST.

692. The practice of the Treasury Department is to require an order for the pursuit of deserters before allowing the expenses of such pursuit. This order, emanating from the commanding officer of the post from which the desertion took place, should name the individuals to be apprehended. The actual and necessary expenses must be sworn to by the persons employed in the pursuit.—*Vol. 5, p. 138.*

693. In case of a claim presented by Lieutenant Hendershott for the apprehension and delivery of a deserter, who had been improperly enlisted and subsequently discharged on writ of *habeas corpus*, it was held that the party performing the apprehension was entitled to the reward advertised by government. Army Regulations, ed. January 1, 1857, paragraphs 1300, 152, 153.—*Vol. 20, pp. 516–518.*

694. It is the practice of the War Department, and is not in conflict with any law, to pay the reward for apprehending deserters to enlisted men, but not to commissioned officers. The expenses paid by government for transportation, &c., to parties sent after deserters, are always deducted from the amount of rewards paid.—*Vol. 28, p. 594.*

695. General Order No. 325, September 28, 1863, authorizes the payment of \$30 reward for the arrest of a deserter from the regular army, but no reward will be paid for the arrest of deserters from the volunteer force. (See circular of Prov. Mar. Gen. No. 6, dated March 11, 1865.)—*Vol. 28, p. 709.* SUTLER, 1997, 2001.

II.—PAY.

696. Though a deserter may re-enlist, he remains such until pardoned, and is not entitled to arrears of pay. See 22d Article of War, established by Congress April 10, 1807.—*Vol. 20, pp. 104, 105.*

697. All arrearages due a deserter are forfeited by his desertion.—*Vol. 10, p. 321.*

698. Where money has been deposited by a soldier, afterwards charged with desertion, it can only be recovered on proof of a pardon or a removal of the charge, or that he has served out his time and been honorably discharged.—*Vol. 30, pp. 650, 651.*

699. A deserter forfeits all pay, &c., and a paymaster who advances money to a soldier who afterwards deserts does so at his own risk. Under the act of March 3, 1851, (9 Stat., 595,) his pay

is forfeited to the fund for the support of the military asylum.—*Vol. 22, pp. 271, 272.*

700. A deserter is not entitled to extra pay for service on the coast of California, allowed by the act of August 31, 1852, (10 Stat., 108, sec. 3,) for the time that he was away from his command.—*Vol. 17, p. 56.*

701. An apprehended deserter whose term would have expired before the commencement of the period for which "extra pay" was granted to the army serving in Oregon and California, by the act of September 28, 1850, (9 Stat., 504,) is not entitled to any of that allowance, in consequence of his serving after that period to make up his time lost by desertion.—*Vol. 27, p. 195.* PAY, VII, 1319.

702. A deserter who dies a few days after his voluntary surrender or arrest, and before he can be brought to trial, is not entitled to the benefit of the law of June 19, 1848, (9 Stat., 248, sec. 5,) granting three months' extra pay — *Vol. 20, p. 161.*

703. And where a soldier is returned to his regiment as a deserter, under arrest, is put on duty, and dies before trial; held that, *prima facie*, it is a case of desertion, and that it must be conclusively shown that the *prima facie* evidence is erroneous, before bounty or arrears of pay can be allowed.—*Vol. 28, p. 684.*

704. A deserter apprehended and sentenced to lose all pay then due, does not lose his right to the two dollars allowed on a certificate of merit subsequently to the sentence of the court-martial. Opinion Attorney General in General Orders War Department No. 59, November 21, 1851. See act of March 3, 1847, (9 Stat., 186, sec. 30.)—*Vol. 16, pp. 302, 303.*

705. A deserter forfeits all pay due at the time of desertion; but laundresses and sutlers are to be paid from the amount due the soldier at the time of such desertion.

NOTE.—As to laundresses, see Army Regulations, edition 1857, paragraph 1185, and paragraph 1363 of Regulations, 1863. As to sutlers, see act of March 3, 1847, sec. 11, (9 Stat., 185,) repealed by act of June 12, 1858, sec. 5, (11 Stat., 336,) but reinstated by act of December 24, 1861, sec. 3, (12 Stat., 331,) and last preceding act modified by act of March 19, 1862, sec. 4, (12 Stat., 372.)—*Vol. 21, pp. 373, 374, 423.*

706. The President or Secretary of War only is competent to relieve a soldier from the sentence of desertion; and when a general commanding undertook, after conviction, to remove the charge of desertion and restore the soldier to duty and pay, his action was overruled, as contrary to law and the regulations.—*Vol. 28, p. 86.*

707. Desertion, *ipso facto*, forfeits to the United States all then due the deserter. A subsequent pardon or remission of sentence cannot restore his right to wages, which the law puts into the treasury *eo instanti* with his desertion.—*Vol. 31, pp. 224, 225.*

708. A soldier deserted and enlisted in the naval service, was arrested, convicted, and returned to his regiment. He claimed arrears of pay for his services in the navy, and the amount of prize

money allowed him. Held, that in respect of all his earnings, including pay and prize money, his service in the navy was in fraud of the rights of the United States under his first enlistment in the military service, and no title to pay could be derived from service founded on desertion.—*Vol. 31, pp. 219, 220.*

709. An enlisted man of the navy found to be a deserter from the army was returned. He was indebted to the navy for authorized advances of money and clothing. Held, that in order to return such advances to the navy appropriation, the proper paymaster should retain from the soldier, as it becomes due to him, a sum equal to his indebtedness, and deposit the same in the name of the deserter to the credit of the navy appropriation.—*Vol. 31, p. 70.*

710. A soldier deserted from his regiment and enlisted in another regiment. He applied to be relieved from a stoppage for ordnance and quartermasters' stores while serving in the latter. Held that not only should the stoppage remain, but that he was not entitled to any credit for service under his second enlistment. The second service was in fraud of the rights of the United States under the first enlistment, and he could derive no title to pay from service founded upon desertion. A bounty jumper may have been continuously in service for years by successive desertions and enlistments, but during the time covered by his first enlistment no claim for military service can arise except under that enlistment.—*Vol. 29, p. 181.*

711. A soldier sentenced by court-martial for desertion is deprived of all pay and allowances from date of sentence to date of restoration to duty or discharge from confinement.—*Vol. 29, p. 41.*

712. Where a soldier, on his return from desertion or absence without leave, is sentenced to make good the time of his illegal absence, he will be paid at the rates that obtained while he was absent, and he will not be allowed the benefits of any law changing these rates until he shall have satisfied the sentence or served a time equal to that which elapsed between his desertion and the passage of the law.—*Vol. 29, p. 337. PAY, VI, 1306, 1308, 1309, 1310; PAYMASTER, I, 1514.*

III. BOUNTY.

713. To entitle a soldier to bounty under the fifth section of the act of July 22, 1861, (12 Stat., 270,) his discharge must be honorable; with which it is held, the War Department concurring, desertion is incompatible.—*Vol. 28, p. 177. PAY, VI, 1310.*

714. A soldier having been a deserter during the period of his enlistment, is not entitled to bounty.—*Vol. 25, p. 627; vol. 26, pp. 141, 142.*

715. A soldier was charged with desertion, found guilty of absence without leave, and subsequently discharged. Held that the discharge not being honorable he is not entitled to bounty.—*Vol. 30, p. 41.*

716. An enlisted soldier deserted the service four days after enlist-

ment, afterwards returned to his regiment, was tried, convicted, and sentenced by court-martial to three years' hard labor. Having served a portion of his sentence the balance was remitted and he was discharged the service of the United States. He claimed pay and bounty; but it was held that the service performed was that of a convict, and having been withdrawn from his appropriate duties in the army by his own misconduct—he having committed the highest of military crimes—that he had no legal claim under his contract of enlistment, either to pay or bounty.—*Vol. 28, p. 87.*

717. A soldier who has violated his contract with the government by committing the crime of desertion during the time for which he enlisted or was drafted, has no legal claim to the pay due at the time of desertion, or to bounty.—*Vol. 28, p. 69.*

718. A soldier having been paid the advance bounty at the time of his entering the military service of the United States afterwards deserted; he was arrested, returned to his regiment, and served out his time. In the settlement of his claim the bounty so advanced was deducted from his pay. Held that, as an honorable discharge is a condition precedent to the payment of bounty, and as by desertion he forfeited his right to such a discharge, he is not entitled to bounty and that the deduction was properly made.—*Vol. 28, p. 191.*

719. A private soldier taken prisoner by the rebels enlisted in the rebel army and afterwards escaped into the Union lines. He had already received the first instalment of the bounty for recruits and claimed those remaining unpaid. Held that his enlistment in the rebel service was, *prima facie*, a case of desertion, and that payment should be withheld until satisfactorily proved that such enlistment was from patriotic motives, such as obtaining valuable information, etc.—*Vol. 28, pp. 192, 193.*

720. The advance of any part of bounty due at a future period is to be deducted from the subsequent pay of a deserter, but instalments of bounty matured and paid before desertion stand on the same footing as his regular pay, and are not to be recharged.—*Vol. 28, pp. 337, 338.*

721. Rebel deserters enlisting into the service of the United States are not entitled to bounty or travel pay.—*Vol. 28, p. 344.*

722. An honorable discharge is held to be a condition precedent to the payment of bounty, and under this ruling a deserter, though pardoned, is not entitled to bounty.—*Vol. 28, p. 391.*

723. The pardon of the President shields the deserter from punishment; but as the regulations, having by statute the force of law, declare that desertion, *ipso facto*, vests in the United States the sum then due him for pay, &c., no pardon, or even order, can take the money out of the treasury and return it to the offender without the authority of law.—*Vol. 28, pp. 570, 571.*

724. Local bounty paid to a recruit and deposited by him with a United States paymaster, in the event of his desertion and subsequent enlistment, cannot be refunded to the party paying it; for the deserter, on conviction, being liable to a fine equal to his deposit, it ought not

to be surrendered until he has been tried and acquitted, or, if found guilty, sentenced.—*Vol.* 28, *pp.* 610, 611.

725. In no case can a municipality receiving credit on her quota be entitled to the deserter's deposit.—*Ibid.*

DETENTION.

726. The commander of a vessel has no authority to discharge a petty officer, seaman, or marine, or to re-enlist them for any other time than the indefinite term within which the vessel shall return to the United States, and all such persons re-enlisting shall receive for that period an addition of one-fourth to their former pay. Acts of March 2, 1837, (5 Stat., 153, secs. 2 and 3;) February 20, 1845, (5 Stat., 725, sec. 1;) March 3, 1845, (5 Stat., 795, sec. 9.) And no authority is conferred on the commanding officer of a squadron or vessel to discharge and to re-enlist for four years a marine whose term expires whilst on foreign service. He can only detain such marine, if his detention is essential to public interest, until the arrival of the vessel at a port of the United States, and not to exceed thirty days from time of such arrival.—*Vol.* 18, *pp.* 224–228.

727. Declaratory acts and other statutes do not have a retrospective effect, and cannot affect or change vested rights, (Kent's Commentaries, vol. 1, p. 456.) But the Supreme Court of the United States decided (January term, 1849) that a commander of a squadron could detain a marine after his term of enlistment expired, if the public interest required it, under act of March 2, 1837, (5 Stat., 153, sec. 2,) on the ground that the marine was subject to such laws and rules as might at any time be established for the government of the navy, and that it was a part of the contract of enlistment that he should obey them whenever passed. Supreme Court, *Wilkes vs. Dinsman*, 12 Howard, 89.—*Vol.* 27, *p.* 143.

DISBURSING OFFICERS.

SEE *Accounts—Accounting Officers—Paymasters—Purchases.*

I. GENERALLY.

II. ARMY AND NAVY.

I.—GENERALLY.

728. All officers, of every grade, whether in active service or not, who shall receive public money which they are not authorized to retain as salary, pay, or emolument, are required to render their accounts, with the vouchers, quarter-yearly to the proper accounting officers of the treasury, within three months, at least, after the expiration of each successive quarter.—*Vol.* 6, *p.* 99.

NOTE.—The act of July 17, 1862, (12 Stat., 593,) requires all disbursing officers to render their accounts (public) monthly instead of quarterly.

729. In all cases where money is advanced by one disbursing officer to another, the officer making the advance must produce the receipt of the receiving officer, (accompanied by his promise to account for the same to the United States,) or he will not receive credit at the treasury.—*Vol. 5, p. 600.*

730. Disbursing officers after receiving public money are responsible for it, and the practice of the accounting officers is to allow, in the settlement of their accounts, any charges for its transportation.—*Vol. 29, p. 449.*

731. The labor of slaves must be paid for to their owners or their agents, or if they purchased their time of their masters, proof of that fact, with evidence of payment by a witnessed receipt or mark, will be satisfactory.—*Vol. 9, p. 61.*

732. Treasury notes placed in the hands of a disbursing officer to meet public liabilities, do not begin to bear interest until actually disbursed by such officers in payment.—*Vol. 11, p. 393.*

NOTE.—This decision was made December 2, 1837. Under recent legislation interest on treasury notes commences from date of issue by the Treasury Department. See acts of July 17, 1862, (12 Stat., 259;) March 3, 1863, (12 Stat., 709;) and June 30, 1864, (13 Stat., 218.)

733. When a disbursing officer pays out a treasury note, he must pass it for the value of the principal and interest then due upon it.—*Vol. 6, p. 362.*

734. A disbursing officer is not authorized, in any case, to issue a treasury note at less than its par value, nor to exchange it at a discount for any other funds.—*Vol. 6, p. 390.*

735. Disbursing officers have no authority to discount United States treasury drafts.—*Vol. 22, pp. 567, 568.*

736. When a disbursing officer receives from government treasury notes which are at a premium in current funds, the officers and men paid by him are entitled to that premium, if the notes are sold and payment made in currency.—*Vol. 6, p. 557.*

737. Treasury notes made under the act of October 12, 1837, (5 Stat., 201,) and placed in the hands of disbursing officers to meet public liabilities, have no legal existence while in his hands, and are to be considered as *issued* when they are by him delivered in payment, and not till then; and the interest does not commence until they are issued. No interest is to be added when thus delivered.—*Vol. 9, p. 195; supra, 732.*

738. A disbursing officer is not authorized to effect insurance on government funds which he transfers from one point to another at the expense of the United States.—*Vol. 12, p. 258.*

739. The accounting officers have no power in any case to credit a disbursing officer with payments not authorized by law. And in

all instances of over-payments, mistakes, &c., application for relief must be made to Congress.—*Vol. 15, p. 290.*

740. A consul is entitled to a commission only on the sum actually disbursed, after deducting the premium, if any, paid on the funds in which the disbursements were made.—*Vol. 11, p. 17.*

741. Disbursing officers are not entitled to commissions on the amount of internal revenue tax retained and paid over by them, the act of July 1, 1862, (12 Stat., 432,) imposing the duty upon them but making no provision for extra compensation therefor.—*Vol. 29, p. 637.*

NOTE.—See the opinion of Attorney General Black, of October 17, 1857, (vol. 9, p. 123,) that no officer of the government having a salary fixed by law, nor any other officer whose compensation amounts to \$2,500 per annum, can receive extra pay for any services whatever, whether it be within the line of his duty or outside of it. See also *Converse vs. United States*, 2 Howard, 463.—*Ibid.*

742. When the account of a disbursing officer is settled at the Treasury, and suit is brought against him for the balance found due, and the matter is afterwards compromised by the entry of a judgment in favor of the United States, by consent, for an agreed amount less than the balance due, the judgment is conclusive as to all the items on both sides of the account as settled. And items in favor of the officer, embraced in the account, cannot afterwards be paid him at the Treasury, even though they were improperly disallowed in the original settlement.—*Vol. 15, p. 347. JUDGMENT OF COURT, 1005; SUIT, 1961.*

743. A and B were appointed special disbursing agents of the government, and C and D agents of the War Department, to provide transportation for troops and munitions of war. Held that for expenditures made by C and D, A and B might make payment; but that drafts drawn by C and D, and receipted and paid by A and B, are not vouchers for A and B. Case of Governor Morgan, Alexander Cummings, General Dix, and others.—*Vol. 25, pp. 703-706.*

744. Disbursing officers are not authorized to pay the heirs or legal representatives of a creditor of the government the balance due until the account of such creditor has been acted upon at the Treasury. Such claims were usually paid on certificates, after formal settlements by the accounting officers, but on special application by the disbursing officer, the amount due being small, he may be authorized by the Comptroller, after examination of the vouchers at the Treasury, to make payment to the heirs or legal representatives.—*Vol. 25, p. 196.*

745. No disbursing officer has a right to issue a due bill, voucher, or other evidence of indebtedness to the representatives of a deceased creditor of the United States. That authority is vested by law in the accounting officers of the Treasury Department.—*Vol. 29, p. 102.*

746. An officer having property cannot escape accountability by surrendering it to others not authorized to receive it. All vouchers

should be suspended in such cases, and a full and exact account required, and the property or avails properly accounted for, or the amount should be charged to the officer.—*Vol. 22, p. 581.*

747. An officer in accepting payment for public property sold, or in any other transaction wherein by his receipt he shows that public money has been paid to him, becomes responsible to the government. While existing laws do provide for relieving officers of their liability for lost vouchers or property in certain cases, they do not authorize any executive or accounting officer to relieve them of their liability on account of having accepted as genuine spurious bank bills or other forms of money.—*Vol. 28, p. 749.*

748. Disbursing officers making payment on copies of orders when the original is retained by the officer receiving payment, should endorse on the original any payment he makes.—*Vol. 28, p. 371. COPIES, 613.*

749. In case an order is confidential, or several subjects are embraced in it, an extract pertinent to the duties for which payment is made should be taken and used.—*Vol. 28, p. 371.*

750. The heirs of a deceased disbursing officer cannot draw the pay due him at the time of his death until all his accounts shall have been satisfactorily settled.—*Vol. 18, pp. 156, 157.*

751. Disbursing officers cannot make payments of interest without the authority of Congress, neither have they the right to purchase on credit. For any proper expenditures funds would have been advanced by the United States.—*Vol. 18, p. 174.*

752. A disbursing officer must place to the credit of the United States the amount of requisitions placed to his credit with an assistant treasurer, and not his own drafts or checks on that officer.—*Vol. 18, pp. 257, 258.*

753. Monthly returns must be made by all persons receiving and disbursing public funds directly to the accounting officers. See circular.—*Vol. 24, pp. 198–201.*

754. Disbursing officers cannot bind the government and make themselves its debtors by drawing in payment of claims beyond the amount intrusted to them, and if, from unusual delay in presentation, the fund from which the check should have been paid becomes exhausted, the claim cannot properly be recognized and settled by the accounting officers.—*Vol. 29, pp. 164, 167, 177.*

755. And even if there be funds subject to the payment of the draft which have been transferred to the treasury, yet if it has been drawn by one who participated in the rebellion, or resides in a disloyal State, or has been held within the enemy's country, indubitable evidence will be required of the loyalty of the payee and of each indorsee through whom it has passed, before recommendation for payment will be made.—*Ibid.*

756. Disbursing officers, by the amended circular of June 20, 1864, are required to send their accounts and vouchers directly to the bureau to which they pertain, and also at the same time copies

of their accounts to the Auditors of the Treasury, together with monthly reports of the tax withheld.—*Vol.* 30, *p.* 275.

757. By the 4th section of act of March 3, 1853, (10 Stat., 239,) it is made embezzlement punishable by fine and imprisonment for any officer charged with disbursements, under any act, to pay any employé of the United States a less sum than that provided by law, and to require such employé to receipt for a larger sum than actually paid, &c. See also 16th section of act of August 6, 1846, (9 Stat., 63.) See also act of 26th of February, 1853, (10 Stat., 171,) in regard to frauds on the treasury, power of attorney, &c.—*Vol.* 27, *p.* 175. COPIES, 612; DELINQUENT OFFICERS, 658.

II.—ARMY AND NAVY.

758. Although, in point of fact, an officer may be charged on the books of the Treasury with the amount of requisitions made in his favor, yet he is not to be held accountable for the money until it shall come to his hands.—*Vol.* 14, *p.* 192.

759. The regulations of the War Department, of March 14, 1835, take away all right to extra commissions of every kind, for which provision is not made by law. Disbursing officers are, therefore, not entitled to the per diem allowance which they were previously allowed.—*Vol.* 11, *p.* 182.

760. When a payment is specially directed by the Secretary of War, it should be allowed to the disbursing officer who makes it, though unauthorized by law. But if the officer to whom such payment was made remains in the service, the amount received should be charged to him.—*Vol.* 15, *p.* 214.

761. When a disbursing officer makes an illegal or double payment on the order of a superior, he does it at his peril, and the government reserves the right to charge it to either or both.—*Vol.* 24, *pp.* 413–418.

762. It is entirely out of the province of a disbursing officer to rectify alleged errors in the payment of accounts of other officers, or to pay any claims for short allowances on former settlement. Such claims should be adjusted only at the Treasury; and any such additional payments should be disallowed in the accounts of the disbursing officer.—*Vol.* 19, *pp.* 213, 214, 567, 568; *vol.* 20, *p.* 469.

762a. There is no law or other competent authority under which a former settlement of an officer's account would conclude the government, and exempt him from liability for a debt omitted in that settlement for money actually received by him.—*Vol.* 19, *pp.* 373, 374.

763. Payments made on an officer's certificate do not absolutely relieve the disbursing officer under paragraphs 1028 and 1029 Army Regulations of 1841, par. 1006, ed. 1861. He is bound to see the correctness of the amount as far as he can.—*Vol.* 27, *p.* 188; *vol.* 29, *p.* 140.

764. When the certificate (of officers' or soldiers' accounts) states the facts necessary to the correct estimate of the amount due, but then goes on to state the amount incorrectly and unnecessarily, the disbursing officer is liable for the overpayment if he adopts the erroneous amount, instead of making the calculation on the correct elements furnished.—*Vol. 19, pp. 539, 540.*

765. A disbursing officer has not the power to settle the accounts of his predecessor. In such cases settlements will be made at the treasury.—*Vol. 21, pp. 261, 409.*

766. Whenever a large balance appears to be due to a disbursing officer or agent, he must be required to show to the satisfaction of the accounting officers how such balance accrued.—*Vol. 17, pp. 452 453.*

767. All moneys received from miscellaneous sources by disbursing officers should be paid over by them and vouchers be produced therefor, in conformity with the act March 3, 1849, sec. 1, (9 Stat., 398,) to be credited to the proper appropriation. A special fund of moneys, thus received, to be kept outside the treasury to meet expenses not provided for by any appropriation would be contrary to the act March 3, 1849. Acts of March 3, 1857, sec. 3, (11 Stat., 249;) July 17, 1862, (12 Stat., 593.) Letter to Provost Marshal General.—*Vol. 25, pp. 194, 195.*

768. When the proper officer certifies to a certain amount as due, which is paid by a quartermaster, and the amount is found to be too great, the excess will be charged to the certifying and not to the disbursing officer, unless the elements for a correct result were furnished.—*Vol. 22, p. 285. Supra, 764.*

769. The accounts of a disbursing officer must be rendered under his own signature. And when the accounts and certificates of B, a disbursing officer, were signed by D, and no explanation offered with the account, they were disallowed for informality, under the rule, and being contrary to army regulations.—*Vol. 22, pp. 250, 251.*

770. A disbursing officer has no right to reopen an account for transportation settled at the treasury.—*Vol. 19, p. 467.*

771. A disbursing officer has no right to pay a claim that has been rejected by the accounting officers.—*Vol. 16, p. 565.*

772. Disbursing officers, when making payments for public stores or services by checks or drafts drawn on funds placed to their credit with Assistant Treasurers or other designated depositaries, are required to note upon the receipt taken for such payment the number, date, and amount of such check or draft, and to designate the Assistant Treasurer, &c., upon whom it is drawn.—*Vol. 28, pp. 644, 645, 702.*

773. The authority of officers duly appointed to disburse on account of government is sufficient to warrant the transfer of money, and the officers receipt is *prima facie* evidence in the case. Transfers must have the written sanction of the Secretary of the Navy before a disbursing officer of that department can receive credit for the

amount he has transferred. Red Book, p. 34.—*Vol.* 18, *pp.* 266–268. WITNESS, 2266.

DISCHARGE.

774. Discharge from the army is regarded as complete when resignation has been accepted and notice thereof received by the officer.

Vol. 28, *p.* 679.

775. The order of a general discharging a commissioned officer is invalid and contrary to article 11, Articles of War. Ed. 1861, Army Regulations.—*Vol.* 25, *p.* 234.

776. No company officer, of his own motion, can discharge a soldier before the expiration of his term of enlistment. A soldier's discharge, to be legal, must be in writing and signed by a field officer, or commanding officer in the absence of a field officer. And no discharge can be given before his (soldier's) term has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or the sentence of a general court-martial. See acts of May 14, 1862, (12 Stat., 385;) February 24, 1864, (13 Stat., 10, sec. 20;) and July 4, 1864, (13 Stat., 380, sec. 5).—*Vol.* 19, *p.* 463; *vol.* 26, *p.* 236.

DOMICIL.

777. Arrears due a soldier deceased are to be distributed in accordance with the laws of his place of domicile when he died. A soldier does not lose his domicile of origin by being removed into another State, by force of military discipline, &c., nor until he acquires a new domicile. If a Prussian, the father of an illegitimate son, inherit from his son by the laws of Prussia, he does not lose his right in consequence of his son's serving and dying in the military service of the United States, unless the latter acquired a domicile in the State where he died, or elsewhere than in Prussia.—*Vol.* 20, *pp.* 54, 55.

778. In case of Jean B. Fairbault and his wife, (the latter deceased,) it was held that the laws of Minnesota, their place of domicile, applied in the heirship of money due from United States, which was ordered to be paid to the husband. Act of March 3, 1855, (10 Stat., 701, sec. 9).—*Vol.* 20, *p.* 493.

779. A step-father who, by the laws of Prussia, is heir to his deceased step-son's estate, is entitled to receive the arrears of pay due decedent.—*Vol.* 31, *p.* 363.

780. Decedent was an enlisted coal-heaver in the naval service. His mother, a native and resident of Prussia, died before him, leaving a husband, the step-father of decedent. His mother was the only lineal heir at the time of her death. Held that, as the law of domicile governs in respect of pay, and as by the laws of Prussia

the step-father was placed on equal inheritable footing with the lineal heirs, he is entitled to the arrears of pay.—*Vol. 31, p. 363.*

781. Where a person residing in the so-called Confederate States during the rebellion, and having had his domicile there before the civil war, demanded payment of certain balances arising under contract with the War Department, and payable before the war, it was held that the title to the same, *jure belli*, became divested from the original owner and transferred to the United States; that such balances never having been reduced to possession, but always having remained in the treasury, cannot now be withdrawn except in violation of law.—*Vol. 29, p. 54.*

782. A father, a resident of Virginia before and during the war, made application for balance of pay due his son, a surgeon's steward in the navy, who died in the service, before the war, unmarried. Held that the title to balances like this, arising in a State lately in rebellion, is divested from the claimant and transferred to the United States, and the accounting officers can only entertain jurisdiction when authorized by act of Congress.—*Vol. 30, p. 548.* DESCENT AND DISTRIBUTION, II, 687.

DRAFTS.

See Bills of Exchange—Checks.

783. When a commissary of subsistence draws drafts in favor of another army officer, who assigns them to B in payment of subsistence stores, and makes affidavit that he paid for the stores with the drafts, and B, the payee, in his affidavit says that he has not assigned, transferred, nor received payment of the drafts, held that B is entitled to payment at the treasury.—*Vol. 25, p. 16.*

784. A quartermaster at Santa Fé drew his draft on the quartermaster's department in the form of a set of exchange. The payee was killed by the Indians, and the first of the set of exchange, then on his person, was lost. Held that the drawer had no right to order the draft to be paid to any other person.—*Vol. 24, p. 17.*

785. Drafts drawn by disbursing officers without authority, or without funds on deposit, can not be regarded as proper claims against the government.—*Vol. 30, pp. 50, 51, 566. Vol. 31, p. 301.*

786. Disbursing officers cannot legally draw beyond the amount intrusted to them, and no power is given to any officer of the government to authorize payment of drafts from any fund outside of that on which the disbursing officer is authorized to draw.—*Vol. 30, pp. 22, 23, 24.*

787. Duplicates, triplicates, &c., should be stamped, as if originals, in order to have any legal validity.—*Vol. 29, p. 275.*

788. Payment of certain drafts drawn by a United States paymaster in favor of an officer of the army, who, prior to resigning in 1861, transferred them to the indorsees, at the time residents of a

seceded State, was held to be barred by joint resolution No. 46, March 2, 1867, (14 Stat., 571,) and also by public law.—*Vol.* 30, p. 632.

789. A creditor of the government may refuse checks or drafts in satisfaction of dues, but having accepted them, he is subject to the laws and incidents pertaining to such instruments.—*Vol.* 30, pp. 22–24.

790. When a draft on the government is lost, not having been paid, the amount is to be paid on the presentation of the proper proof, under oath, of the loss. The proof must state that the draft is lost, and must also state, as far as is known, how it was lost, and whether it had been negotiated, and if so to whom.—*Vol.* 13, p. 126.

791. Payment will be made upon a certified copy of draft, accompanied with a bond of indemnity, when it is shown that the original draft has been lost.—*Vol.* 22, p. 384; *vol.* 28, pp. 236, 237.

792. Drafts drawn on the assistant treasurer of the United States at St. Louis by A, payable to the order of B, and by B first indorsed, and afterwards B's name erased, were presented by C for settlement at the treasury. Held that there was no sufficient assignment to authorize their payment to any assignee, and that the mere holding of the drafts by C would not preclude a future demand on the government for payment to the original holder B.—*Vol.* 23, pp. 10, 11.

793. A disbursing officer settled bills against the United States by drafts drawn on the depository of the government, having been officially authorized so to do. The drafts were not paid at the depository, the funds placed there by the United States having been seized by the rebel authorities, and on subsequent presentation at the Treasury Department were paid and charged to the disbursing officer. But it was held that he is not liable for the non-payment of his drafts if the non-payment resulted through the *laches* or crime of another; that having paid for the purchases or services authorized by law, and drawn against funds placed to his credit either in conformity with section 1, act March 3, 1857, (11 Stat. 249,) or by special order of the government, and having accounted for all the public money subject to his control, he has discharged his duty and no liability attaches.—*Vol.* 28, p. 738.

794. Actual and reasonable necessary expenses incurred in cashing drafts are allowable.—*Vol.* 17, pp. 200, 201.

ENGINEERS.

795. Engineer officers are not required to send copies of their monthly accounts current to the Auditors of the Treasury. Monthly summary statements in lieu of the accounts may be sent.—*Vol.* 30, pp. 305, 306.

796. The approval of the Secretary of War is required to the appointment of each civil engineer employed under the joint resolution of March 29, 1867, (15 Stat., 28.) The War Department,

which appoints them, is responsible for their proper employment under the act. Upon proof of appointment and services, the accounting officers must allow their pay as fixed by approval of Secretary of War, within the limits prescribed by the law.—*Vol. 30, p. 622.*

797. Civil engineers thus employed are neither clerks, foremen, nor overseers, within the intent of this resolution.—*Ibid.*

798. The joint resolution No. 27, of March 29, 1867, (15 Stat., 28,) authorizing the employment of five civil engineers, does not modify paragraph 1,361 of army regulations.—*Vol. 30, p. 669.* PAY, XVI, 1437, 1438.

ERRORS.

799. Arithmetical errors for or against claimant are to be corrected. But where the error is not greater than 20 cents the practice is not to notice it.—*Vol. 25, p. 310.*

NOTE.—This applies when there is only a single error; but when the aggregate of small errors exceeds this amount it is to be noticed and disallowed. DISBURSING OFFICERS, II, 764, 768.

800. Errors of calculation and unauthorized advances cannot be allowed by the accounting officers.—*Vol. 20, p. 18.*

801. A creditor of the government filed his account in which he had made an error against himself. The question arose whether he could be paid more than he claimed, and it was held that the true amount must be paid whether the claim was more or less, the accounting officers not being required to do in their official capacity, for the benefit of the government, what they would disdain to do as private individuals for their own benefit, viz: to take advantage of the mistake of a creditor.—*Vol. 29, p. 580.* ACCOUNTS, 13.

EVIDENCE.

802. Where the statement of a government officer conflicts with that of a claimant in regard to a transaction equally within the means of knowledge of both parties, and there is no additional proof on either side, the government will act upon the evidence of the officer.—*Vol. 15, p. 20.* CONTRACTS, 569, 570.

803. By law, the signature of partners to a sealed instrument will not be binding individually, if made in the name of the firm. In such a case, each partner should sign and seal for himself in his individual capacity, and not in the name of the firm.—*Vol. 7, p. 101.*

804. In cases where a charge is made by one person, for a payment made by him to another, for freight, wharfage, drayage, or any other purpose, the particulars of the charge must be fully specified in the body of the account, and a receipt from the person to whom the payment is made must be annexed as a subordinate voucher.—*Vol. 3, p. 235.* PAY, I, 1090.

805. Telegraphic reports are inadmissible as evidence before the accounting officers of the Treasury.—*Vol. 12, p. 453.*

806. When a surgeon's steward who was lost on the frigate Cumberland, in a letter to another party, gives him, in case of his (the steward's) death, all his property and wages due him from said vessel, but omits the signatures of witnesses required by the regulations, and there is no evidence of the decedent's handwriting but the letter, additional proof will be required, and time allowed for those who may have a stronger claim to present it.—*Vol. 25, pp. 14, 15.*

807. When the officer witnessing the payment writes the name of the soldier, who does not make his mark, the suspension will be removed on proof that payment in good faith had actually been made. The certificate of company officers to a succeeding muster-roll, stating that the payment has been made for the time specified on the suspended roll, will be taken as evidence.—*Vol. 25, p. 407.*

808. When a soldier dies in hospital, and the record of his death on the roll is made out at a place distant from the hospital, after the lapse of time, and upon unofficial testimony, it (the record) must be regarded as incorrect; and the official report of the surgeon in charge of the hospital, given at the time of death, or taken from official record made at the time of death, and corroborated by other testimony in the application for bounty, &c., will govern.—*Vol. 25, p. 13.*

809. A person receiving money must sign his name; if unable to write, then make his mark, which must be witnessed, and in case of a soldier receipting on pay-roll, by a commissioned officer. When one writes the name of another to a receipt, he must have legal authority for so doing.—*Vol. 25, pp. 166, 167.*

810. The record on the roll is the evidence of the accounting officers in the settlement of soldiers' claims, but when the testimony is indisputably clear and convincing that such record is erroneous, settlement should be made in accordance with the facts fully proven. When such record says "died February 23, 1862," and the certificate of captain and lieutenant of company says "died January 23," and the application is for payment to January 23, the record was held to be invalid. And when the June roll said "died on sanitary boat about May 19," but the certificate gives April 19 as the date of death, and affidavit of heirs says died about April 22, held that the record was erroneous, and that the captain's certificate must be regarded as furnishing true date.—*Vol. 25, pp. 126-128.*

811. The evidence of witnesses that "he is dead" is not sufficient. The particulars of the fact of his death must be given. Witnesses must testify whether their knowledge is based upon report, or upon their presence at the death of the individual.—*Vol. 19, pp. 17, 18.*

812. When payment is asked on lost certificate of discharge of soldiers, the loss must be proved by the best evidence the case is susceptible of; that diligent search has been made; that no pay has been received on the amount certified, and no assignment or transfer made.—*Vol. 22, pp. 246, 259, 267, 268, 278, 279, 309, 320, 443; vol. 23, p. 363; vol. 24, pp. 166, 167, 179, 196, 239, 363, 364.*

813. When an officer of the army is under arrest by civil authority for an alleged crime, and is afterwards tried and acquitted, held

that in a claim for pay during such arrest a certified transcript of the record of the court is the evidence required to show his trial and acquittal.—*Vol. 22, pp. 262, 263.* PAY, I, 1130.

814. When a man, by his undisputed receipt, acknowledges to have received money of an agent, and thereby accredits the agent with his principal, the receipt is not only *prima facie* evidence, but conclusive evidence of payment.

It is a general rule of English law, that no man can maintain an action for a wrong when he has consented or contributed to the act which occasioned his loss. (Abbott, 588.) See, also, *Opinions Attorneys General in Sear's case, November 23, 1855.*

Both these rules apply to disbursing or other officers acting for the United States. See also, *United States vs. Hawkins, 10 Peters, 125.—Vol. 17, pp. 374, 375; vol. 27, p. 152.*

815. Although protests are not regarded as legal evidence by the courts in this country, yet credit is generally given to their contents by merchants and underwriters and settlements made accordingly.—*Vol. 19, p. 564.*

816. A protest is not received as evidence for master or owners. *Abbott Shipping. p. 380.—Vol. 18, p. 46.*

817. When a commissary of subsistence allowed an account of another for commutation of rations, held that the evidence of being an enlisted man not having been furnished, payment could not legally be made, and where B signed a receipt for the persons who had received rations, payment would be made, if for no other reason, on the ground that B had no authority so to do.—*Vol. 25, p. 209.*

818. In claims made under the act of March 3, 1863, (12 Stat., 750, sec. 4,) to suppress rebel raids, &c., for supplies seized by United States officers, evidence must be furnished that the property was not only taken by proper authority, but that it was accounted for by the officer whose receipt was given at the time of seizure, showing that the government actually received the benefit of its use.—*Vol. 28, p. 573.*

819. Where vouchers for transportation were delivered to an express company for delivery, and were lost or stolen *en route*, evidence that the service performed was in accordance with law and the regulations must be produced as a condition precedent to a settlement.—*Vol. 31, p. 362.* PAYMASTER, I, 1517; QUARTERMASTERS' STORES, 1778.

EXECUTORS AND ADMINISTRATORS.

820. Administration is not necessary in order that those entitled to it may receive from the treasury the amount due deceased sailors, &c. Payment is made: 1st, to the widow; 2d, children; 3d, father; 4th, mother; 5th, brothers and sisters; 6th, heirs generally, on proof by two disinterested witnesses of the facts entitling the party to receive the pay.—*Vol. 21, pp. 402, 403.*

821. When granted on estate of a person who proves to be alive, the letters are void as the matter is *coram non judice*; and all receipts, acquittances, &c., by the assumed administrator or executor are of no effect.

The authorities are full and explicit that when a probate court grants letters testamentary even on a forged will of an actual decedent, or issues letters of administration in such a case on fraudulent proof of a right to administer to a person not entitled, these letters are of judicial effect and conclusive, being *coram judice*, and a receipt by such executor or administrator is valid, because the court had jurisdiction and must be presumed to have ascertained the rights of the parties. But probate and similar courts having power to grant letters testamentary and of administration only upon the estates of the dead, the assets of a living man are in this respect beyond their jurisdiction, and any proceedings on matters *coram non judice* are void from the beginning.

The following authorities bear directly on this point:

Williams on Executors, edition* of 1849, p. 451, a leading case; Allen, administrator of Hand, *vs.* Dumas, Durnford, and East, p. 125; Bushin *vs.* Taylor, Brown's Chancery Cases, p. 708; Peebles's case, 15 Sargeant and Rawle, p. 42.—*Vol.* 27, p. 133.

822. Letters of administration may be granted in the case of a person who has been absent seven years; the presumption of law being that the life of an absent person of whom nothing is known expired at the end of seven years from the time that he was last known to be alive.—*Vol.* 25, p. 697.

823. In order to show that the person claiming money due a deceased person from the United States has a legal right to receive it, he should produce and file with the disbursing officer making the payment the original letter of administration, or a copy thereof duly certified, or an official certificate from the clerk of the court from which it issued, that it appears by the records of said court that he has been duly appointed, and is legally empowered to act as administrator on the deceased person's estate.—*Vol.* 12, p. 184.

824. Where the balance due a deceased person is paid to an administrator deriving his authority from a court of competent jurisdiction, though obtained by fraudulent means, payment will not be made again when claimed by the true representative of the deceased. But where payment is made to an administrator whose authority is derived from a court possessing no power to grant administration, the legal representatives of the deceased have a valid claim on the government for the money. When the jurisdiction of the court granting the power is denied, and the question is one of fact merely, such as the residence of the deceased, &c., the most conclusive evidence of the want of jurisdiction will be required.—*Vol.* 14, p. 253.

825. The government do not recognize an administrator appointed without the consent of the heirs of the deceased.—*Vol.* 3, p. 37; *vol.* 22, pp. 322–325, 335–337.

826. Where arrearages are claimed by an executor for the benefit of others, either the will should be probated in the county where the deceased lived, or those interested in the trust should signify their assent that the amount should be paid to the executor without probate of the will.—*Vol. 15, p. 73.*

827. The rule requiring letters of administration, where the relation of claimants to deceased is more remote than that of wife or child, is relaxed where the balance due is not large.—*Vol. 30, p. 559.*

828. Arrears of pay will not be paid over to administrator, unless with consent of heirs, when payment can be made to the heirs directly.—*Vol. 24, pp. 147, 148.*

829. A payment to the heirs of a deceased soldier is considered a valid discharge of the claim by the government. And in case of such payment, a subsequent application by the administrator, in behalf of the creditors, will not be regarded.—*Vol. 14, p. 357.*

830. Money due to a deceased soldier is not to be paid over to an administrator, unless it shall appear that he is an heir of the deceased, or has been appointed at the request of heirs or creditors.—*Vol. 14, p. 58; vol. 21, pp. 307, 308; vol. 25, pp. 146, 197, 317, 463, 619, 759, 765.*

831. An administrator's receipt will acquit the government of liability. It is the practice of the accounting officers to require the administrator, in his application for arrears of pay due decedent, to file proper evidence of consent of heirs.—*Vol. 25, p. 619.*

832. Administrators can be recognized only when they are appointed by consent of heirs, evidence of which must be furnished the accounting officers, or, in default of heirs, when they are bona fide creditors, in which case payment is allowed only to the amount of duly probated accounts against decedent.—*Vol. 28, p. 140.*

833. Money due from the United States cannot be paid over to an administrator who has no interest in the estate of the deceased, either as heir or creditor. If no heirs or creditors apply, the money will remain in the treasury.—*Vol. 30, p. 97.*

834. Payment of amount due deceased laborer will be made to widow or heirs without administration.—*Vol. 23, p. 4.*

835. When the application for pay due a deceased laborer of the quartermaster's department does not say that decedent died unmarried, leaving no children, and letters of administration are not filed with consent of heirs, payment will be suspended.—*Vol. 25, p. 32.*

836. The guardian of a minor, being one of three executors under a will, can collect rent due to the estate of such minor, said estate being by will devised to said minor. One executor alone can do any act which all the executors might do, and if there be several executors or administrators, they are regarded as one person, and the acts done by one of several executors are the acts of all. *Opinions Attorneys General, December 8, 1827, vol. 2, p. 66.—Vol. 25, p. 614, 615. GUARDIAN, 937.*

837. Charles Fierer, a Hessian officer, served in the British army

under Cornwallis, at Yorktown; after the surrender he was appointed a captain of cavalry by the State of Virginia, serving as such less than a year. His administrators were paid on account of half-pay upwards of \$3,000, in addition to the half-pay he received while living. Under several acts of Congress March 3, 1849, sec. 6, (9 Stat., 395;) July 5, 1832, (4 Stat., 564;) March 3, 1835, sec. 4, (4 Stat., 779;) May 15, 1828, (4 Stat., 269)—Fierer's administrators claim that the award of the Secretary of the Interior, for upwards of \$13,000, as commutation for five years' full pay with interest, he paid them. Held that the power to decide whether the party demanding payment is entitled thereto, to collate the proof and judge of the sufficiency of vouchers, belongs to the accounting officers; that, so far as compensation should follow service, the claim has no merit; that three sets of administrators have been appointed, and two of them by a court within whose jurisdiction decedent never lived; that, by a strict construction of the laws on the subject, the jurisdiction as to the validity of the claim, in respect of the person performing service, is still with the Secretary of War; that, recognizing the jurisdiction of the Secretary of the Interior, he having decided on the 30th of March, 1859, against the claim, that adjudication must stand while the facts and evidence remain the same, (Dec. Supreme Court, 15 Peters, 400, 401, and Opinion of Attorney General;) that if the Secretary of the Interior, by his decision, November 23, 1861, could legally decide the claim, his decision of March 27, 1862, directing payment to be made by an administrator selected by himself out of the number appointed, was invalid, the right to decide upon proof to whom payment should be made resting with the accounting officers; that it is the duty of the accounting officers to reject the payment of claims to administrators, not heirs, nor creditors, nor appointed with consent of heirs; that when an amount is admitted to be due, the government is holding it in trust for the benefit of the legal heirs; that no heirs nor creditors appearing, it, of right, belongs to the people of the United States, and should remain in the treasury.—*Vol. 25, pp. 197, 201, 358-395, 463, 464.*

838. And although there be evidence that the money, collected from the government as half-pay, was never paid over by the administrators to Fierer's heirs, it does not follow that they have the right in consequence of such non-payment to demand of the government the amount thus allowed and paid as such half-pay. The remedy of claimants is against the administrators and their sureties, and the courts only can enforce the rights of the heirs.—*Vol. 29, p. 661.*

839. Since the passage of the act of June 24, 1812, (2 Stat., 758, sec. 11,) the rule has been, in the payments of claims to administrators of estates of non-residents, to require letters of administration to be taken out in the State or at the place where the intestate had his domicile. An exception to the rule is had only when the proof is clear that the opposite is alone practicable.—*Vol. 25, p. 147.*

840. C, a boatswain's mate, died in Washington. A, his landlord, presented a claim to the accounting officers for board, nursing, and attendance. C enlisted at Washington, and had his domicile there for several years. D, a brother of C, living in Baltimore, applied as administrator of decedent for arrears of pay. Held that the claim of A may be first paid, and the balance to D.—*Vol. 22, pp. 337, 338.*

841. The receipt of administrator of a deceased partner is not a valid discharge for a debt due to the firm. The receipt of the surviving partner, or of a "receiver" appointed by a court of competent jurisdiction to settle the affairs of the firm, is a valid discharge.—*Vol. 17, p. 439.*

842. In payments of magnitude, it is not sufficient for the claimant to produce evidence that she is the widow and only heir of deceased. Payment in such cases will only be made to a duly authorized executor or administrator.—*Vol. 20, p. 323.*

843. A claim for prize money was paid to A. as administratrix of her deceased husband's estate, on letters of administration exhibited by her. Claim for the same was subsequently made by B., alleging that she, and not A., was the wife and widow of the deceased. Held that the government would not be justified in making payment twice, and that the rightful heir must seek redress from the administratrix or her bondsmen through the courts.—*Vol. 30, pp. 367-8.*

844. The captain of a United States transport contracted to furnish for the vessel, the officers, crew, and engineers, and their rations. Having deceased, his wife, as administratrix, applied for the amount due on the contract, but it was held that the expenses for the wages and provisions of the officers and crew constituted a first lien upon the amount due from the government, and that evidence of the settlement of these should be presented before payment of any balance to the administratrix.—*Vol. 28, pp. 484, 485.*

845. The creditor and administrator of a deceased soldier entitled to arrears of pay may, in default of heirs, be paid the amount of his probated claim, if within the sum due from the government.—*Vol. 29, p. 620.*

846. Where certain buildings, the property of decedent, had been rented by the United States, the executor under the will, and not the heirs, is entitled to receive the rental pending the settlement of the estate.—*Vol. 28, p. 148.*

FEES.

847. The United States district attorneys are entitled to fees for services not included in their official duties. Thus, when a United States attorney examined the title and prepared the lease of lands for the quartermasters' department, held that he was entitled to extra pay.—*Vol. 23, p. 468.*

848. Government employes and soldiers employed as auctioneers are not entitled to any fees in the latter capacity. See act of August

23, 1842, (5 Stat., 513, sec. 3.) See also p. 510, sec. 2.—*Vol. 17, pp. 86, 99; vol. 20, p. 143.*

849. Enlisted men are not entitled to fees as auctioneer.—Acts of March 3, 1839, (5 Stat., 349, sec. 3, and August 23, 1842; 5 Stat., 508, sec. 2.)—*Vol. 19, pp. 320, 321; Vol. 18, pp. 282, 283.*

850. When a treasury warrant is sent to an attorney of a colored soldier, and the payee cannot be found, the attorney, although returning the warrant to the treasury, is not, under existing laws, entitled to receive from the treasury the fees allowed him by act of Congress for prosecuting the claim.—*Vol. 29, p. 611.*

851. Fees paid a magistrate or notary before whom affidavits were made for the benefit of officers having accounts with the United States, cannot be allowed by the accounting officers.—*Vol. 28, p. 719.*

852. When less than the legal or customary fees for acknowledgments have been expended, only the amount actually paid can be allowed.—*Vol. 30, pp. 397, 398.*

853. Expenses of postage, stationery, affidavit, &c., are included in attorney's fees.—*Vol. 30, pp. 397, 398.*

854. The second section of the joint resolution of March 29, 1867, (15 Stat., 26,) applies the scale of fees, which by the joint resolution of July 26, 1866, (14 Stat., 368,) was made applicable only to bounties, to the settlement of *all* claims for pay, bounty, prize money, or other moneys due to colored soldiers, sailors, or marines, and the scale of fees applies to all bounties allowed by any act of Congress.

1. Where separate applications are made for ordinary bounty and for additional bounty, both settled by a single check or certificate, the attorney is only entitled to a fee for one application.

2. Where advances are made by the correspondent of a Washington agent, the attorney of record only can be recognized. Neither the affidavit of the correspondent nor of the party to whom the advance was made can be received.

3. The Commissioner must discover, identify, and pay the claimant, and cannot pay the attorney holding a power of attorney made subsequent to the settlement of the claim; see joint resolution March 29, 1867, (15 Stat., 26.) Nor can a certificate, with the assignment duly executed by the claimant, be paid to the assignee.—*Vol. 30, pp. 346, 347.*

855. Claim agents and attorneys practicing before the Second, Third, and Fourth Auditors, are allowed for the prosecution of claims for back pay, bounty, prize money, or other moneys due from the United States to officers or men in the army, navy, or marine corps, except in cases of colored claimants, and for the collection and remittance of all sums not exceeding \$200, ten per centum; for all sums exceeding \$200, and less than \$800, ten per centum on the first \$200, and five per centum on the remainder; and for all sums of \$800 and upwards, \$50; said fees to include all expenses incident to the collection of such claims, except notarial or other acknowledgments,

which shall be defrayed by the claimant. A violation of these regulations will be deemed a malpractice, and the guilty party shall be suspended from the further prosecution of claims in the department.

The amount of fees for the collection, &c., of claims of colored claimants is prescribed in the 2d section of the joint resolution of July 26, 1866, (14 Stat., 368,) and joint resolution No. 25, approved March 29, 1867, (15 Stat., 26.)—*Vol. 30, p. 328.*

856. So much of the joint resolution of July 26, 1866, (14 Stat., 368,) relating to bounty to colored soldiers, as requires the agent or attorney to file with each claim his oath or affirmation that he has no interest in said bounty beyond the fees for the collection of the same, is not regarded as applying to State agents who are paid by their States, and who act gratuitously in the collection of claims.

Vol. 29, pp. 376, 365.

857. Only the attorney whose name appears in the papers is authorized to be repaid his advances, and these must have been made in money and must be substantiated by the attorney's affidavit and the claimant's consent, or satisfactory proof that they have actually been paid.—*Vol. 30, pp. 397, 398.*

FERRIAGE.

858. Where ferriage service has been properly rendered the United States, the legal rates are to be paid.—*Vol. 26, p. 7.*

859. But where the ferriage service had been rendered subsequent to the publication of the order of the War Department that in the settlement of claims of ferry companies a deduction of fifty per centum would be made from their regular charges, and a sufficient time had elapsed for the claimant to become acquainted with the action of the Quartermaster General, the decision of this officer allowing fifty per centum of the legal rates was held to be valid. (See order of Quartermaster General, No. 2, March 10, 1863; and No. 6, May 11, 1863.)—*Vol. 29, p. 305.*

FINES.

860 Fines imposed by regimental court-martial go by law to the military asylum, and cannot be diverted to the regimental fund. Army Regulations, paragraphs 198 and 204, ed. 1861; act of March 3, 1851, (9 Stat., 596, sec. 7.)—*Vol. 24, pp. 172, 173.*

FORAGE.

861. It has been decided by the Second Auditor and Second Comptroller that the forage for two horses, under the act of February 11, 1847, (9 Stat., 124, sec. 4,) is limited to the continuance of the war, and that in time of peace forage for one horse only can be allowed under the act of March 3, 1845, (5 Stat., 746.) See decision in Van

Bokkelen's case, November 19, 1849, on file in Second Auditor's office. See Second Comptroller's letter file, January to June, 1853, No. 1.

Attorney General Crittenden gave an opinion the reverse of the above, and says if "*leges posteriores priores abrogant*," the regimental quartermasters are entitled to forage for two horses (in time of peace.) See letter files Second Comptroller's office, July 1 to December 31, 1851, Nos. 133, 134, and 122.—*Vol. 27, p. 189.*

862. The proviso of the act of March 3, 1845, (5 Stat., 745,) limiting the allowance of forage for officers' horses in time of peace, was intended as a permanent provision, and is so to be considered by the accounting officers.—*Vol. 12, p. 275.*

NOTE.—The act of July 17, 1862, (12 Stat., 594, sec. 1,) forbids commutation of forage except it cannot be drawn in kind. General Orders of the War Department Nos. 91 and 132, 1862, and 73, 1863, prescribe the manner of drawing and commuting forage under the law.

863. To entitle an officer to draw forage in kind, or to commute it in money, it must be made to appear that the horse was kept for the public service, and the certificate must be framed accordingly.—*Vol. 9, p. 625*

864. Officers of the corps of engineers are not entitled, under the act of July 5, 1838, (5 Stat., 256, sec. 2,) to commutation for forage, unless upon certificates that the horses claimed for were actually kept.—*Vol. 9, p. 611.*

865. By the law of March 3, 1845, (5 Stat., 745,) all forage officers who are neither general nor field officers, nor officers of dragoons are to be considered as belonging to the class of "*other officers entitled to forage*," mentioned in the proviso to the third paragraph of the 1st section of the act; and consequently, the officers of the light artillery are entitled to forage for one horse only.—*Vol. 11, p. 130.*

866. Under the act of March 2, 1821, (3 Stat., 615,) four companies in each regiment of artillery are directed to be equipped as "light artillery." The officers of these companies are the only artillery officers entitled to forage under the act of February 24, 1812, (2 Stat., 685.)—*Vol. 10, p. 447.*

867. Officers of the light artillery are not entitled to compensation for forage, except when their companies are actually mounted. It is not enough that they are designated to be mounted; they must be actually mounted.—*Vol. 15, p. 382; vol. 16, p. 176.*

868. Paymasters, surgeons, and assistant surgeons, are entitled under the act of March 3, 1845, (5 Stat., 745,) to forage for one horse each only, as they are within the denomination of "*other officers entitled to forage*," specified in the said act.—*Vol. 11, p. 129.*

869. Under the opinion of the Attorney General, regimental quartermasters of the dragoons, artillery, infantry, and riflemen, respectively, are entitled, under the 4th section of the act approved Febru-

ary 11, 1847, (9 Stat., 124,) to the allowance of forage for two horses.—*Vol. 15, p. 25.*

870. It is assumed that the war with Mexico continued to July 6, 1848, inclusive. Officers are therefore entitled to the allowance of forage as in time of war to that date.—*Vol. 19, pp. 133, 134.*

871. A mounted soldier of volunteers or militia, in the service of the United States in the war with Mexico, is entitled to 12½ cents only per day for forage furnished by himself, in conformity with the 2d section of the act of March 19, 1836, (5 Stat., 7,) except when travelling from his home to the place of rendezvous, or from the place of his discharge back to his residence, in which case he is entitled to an allowance for forage of 25 cents per day, by the 10th section of the act of June 18, 1846, (9 Stat., 18.)—*Vol. 12, p. 19.*

872. Under the 17th section of the act of August 3, 1861, (12 Stat., 290,) providing that, under certain specified circumstances, an officer may, at the discretion of the President, be wholly retired from the service with one year's pay and allowances, forage is not allowed.—*Vol. 26, p. 176.*

873. An officer in the field not receiving his full allowance of forage on account of lack of supplies, is not entitled to commutation for the remaining deficiency.—*Vol. 25, p. 591.*

874. The law of April 9, 1864, (13 Stat., 46,) allowing forage to army chaplains, is not affected by the act of March 2, 1867, (14 Stat., 422,) but remains in this respect in full force.—*Vol. 30, pp. 434, 435.*

FREIGHT.

SEE *Charter-party—Demurrage—General average.*

875. Where a vessel, under contract with the Navy Department to carry coal to New Orleans from Philadelphia, was captured by a rebel privateer and sunk, the freight not having been earned cannot be regarded as a valid claim, nor can the ship's expenses be paid for by the shipper, since they are requisite in part to the seaworthiness of the vessel.—*Vol. 28, pp. 134, 135.*

876. No claim for freight can be admitted until it shall be made to appear that the contract has been fulfilled on the part of the owners; that is, until the goods have been delivered in good order and condition as when shipped, or injured by the perils of the sea.—*Vol. 12, p. 38.*

877. When payment of freight has been made in advance, shipper is not precluded thereby from recovery back, in the absence of stipulation to the contrary, (3 Sumner R., 66,) if the contract of affreightment has not been completely performed.—*Ibid.*

878. If a ship be disabled from completing her voyage, the owner may still entitle himself to the whole freight, by forwarding the goods by some other means, or by repairing his own vessel and completing the voyage, if that be done within a reasonable time.—*Vol. 12, p. 59.*

879. Pro rata freight only is due when the ship, by inevitable necessity, is forced into a port short of her destination; and being unable to proceed on her voyage, the goods are then voluntarily accepted by the shipper.—*Vol. 10, p. 94; vol. 12, p. 178.*

880. If by necessity goods are delivered at a place short of their destination, and properly received by a duly authorized officer of the government, freight is allowed for the journey performed *pro rata itineris peracti*.—*Vol. 20, p. 166.*

881. When a part of the cargo is damaged in consequence of the fault of the master or his crew, from their negligence, carelessness, or improper conduct in regard to the stowage and preservation of the cargo, no freight can be legally claimed on the damaged part of the cargo, but the shipper has a legal claim on the shipowner for the injury sustained.—*Vol. 11, p. 428.*

882. If, on the arrival of a vessel at her port of discharge, due notice is given to the consignee to receive the cargo, and its discharge from the vessel and delivery is prevented by the consignee, the freight is earned within the true and legal construction of the bill of lading.—*Vol. 11, p. 426.*

883. When goods arrive at the port of destination in so damaged a state as to be of no value, but not owing to any fault in the owner or master of the vessel, the owner of them is not at liberty to abandon them for the freight, but the shipowner is entitled to recover full freight for the voyage.—*Vol. 12, p. 246.*

884. Salvage is a loss, to which, by law, vessel, freight, and cargo are liable to contribute; therefore, the owners of the vessel are entitled to freight only on that part of the cargo which came in to the possession of its owner or his agent; or, in other words, that for so much of the property saved from the wreck as was required to pay salvage, no freight is chargeable.—*Vol. 8, p. 47.*

885. All accounts for freight must be accompanied by bills of lading, and proof of delivery to the consignee, viz., his receipt for the articles delivered.—*Vol. 9, p. 368.*

886. Damage of cargo, occasioned by neglect or carelessness of carriers, or unseaworthiness of vessel, may be deducted from the freight; and even where there is some doubt whether the damages arose from either of these causes, or "from the dangers of the sea," the right of the government may be affirmed to make this deduction.—*Vol. 21, pp. 109, 110.*

887. A steamboat is a common carrier, and subject to the same liabilities as the latter. A military officer shipped horse-batteries on board a steamboat, and in consequence of bad stowage several horses died. Held that, as the officer commanding did not assume control of the steamboat in placing the horses, the owners were liable. Demurrage arises out of an express contract, and where delay occurs in the delivery of the freight, and from the nature of the case is incidental to the voyage, a claim therefor (for demurrage) is invalid. The owners of a steamboat, seized by order of a military officer for

the purpose of transportation, are entitled to compensation; but the claim must first be approved by the Quartermaster General. Case of the steamers Jacob Strader and Bostona.—*Vol. 25, pp. 667–671.*

888. When the charter-party of affreightment provides that payment of freight shall be made to B, the master of the vessel, and B dies, held that payment may be made to any one of the part owners the others consenting.—*Vol. 24, p. 317.*

889. Freight on arms purchased abroad should be charged to the appropriation for the purchase of arms.—*Vol. 24, pp. 339, 340.*

890. When the damage was clearly caused by the fault of the master or crew, by negligence, improper storage, or unseaworthiness of the vessel, the agent of the United States would not only be justified in refusing to pay freight on the damaged goods, but also in withholding payment of freight upon the remainder of his shipment to an amount covering the damages, until it should be adjudicated by the proper authority.—*Vol. 25, p. 123.*

891. Where a vessel was stranded, and a portion of the cargo saved, and by the master transshipped, and by him delivered to the consignee, payment of freight was allowed on the ground that the proximate cause of the loss of the vessel and part cargo was occasioned by a peril of the sea.—*Vol. 26, pp. 223, 224.*

892. Damages occasioned by the necessary incidents of a sea voyage do not constitute a valid objection to the payment of freight.—*Vol. 17, p. 276.*

893. When goods are damaged by perils of the sea, without any fault of the master or the owners of the vessel, government is liable for the freight.—*Vol. 18, p. 312.*

894. A leak caused by heavy seas was held to be a "peril of the sea," and the cargo thereby being damaged, freight is to be paid without deduction.—*Vol. 21, p. 280.*

895. In order to entitle a ship-owner to freight on articles damaged in consequence of a leak, &c., it must be shown that the vessel was seaworthy, sound and sufficient for the voyage when she put to sea.—*Vol. 19, p. 1.*

896. The merchant or consignee is liable for freight on goods delivered to and accepted by them, though greatly damaged by the perils of the sea. But if the loss or damage be occasioned by the negligence or want of skill of the carrier, no claim for payment of freight will be entertained.—*Vol. 19, p. 564.*

897. Ship-owners are liable for damages to goods on board vessels, unless caused without fault on their part, or on the part of the masters.—*Vol. 18, pp. 413, 414.* PROPERTY LOST, 1747, 1748.

898. The ship-owner is insurer against all damages but those excepted in the contract of affreightment.—*Vol. 19, p. 1.*

899. A vessel arriving at her port of destination, and waiting the time specified for discharge, delivered her cargo, except a small portion detained through the action of the quartermaster. The vessel soon after was wrecked in a storm, with the remainder of cargo on

board. Held that the action amounted to delivery, and full freight should be paid.—*Vol. 24, pp. 666–668.*

900. Where goods were jettisoned for the safety of the ship and cargo, no claim for freight can be entertained on the articles jettisoned until an adjustment be had and the contribution declared, and the loss should be made good to the shipper by a general average contribution.—*Vol. 25, pp. 153, 154.*

FURLOUGH.

901. When an officer of the navy is furloughed “until further orders,” and subsequently receives an order to report himself as a witness before a court-martial, the order puts an end to the furlough.—*Vol. 5, p. 226.*

902. A furlough is terminated by an order directing the officer to report for duty immediately on the acceptance of the order by the officer.—*Vol. 27, p. 188.*

‘A navy officer furloughed for a special time is entitled to leave of absence pay from the expiration of that period.—*Vol. 27, p. 188.*

903. A navy officer furloughed for a specified time, and ordered on special temporary duty, which he completes before the expiration of his furlough, is entitled to his leave pay after the completion of the special duty to which he was ordered, and is not again put on furlough without a new exercise of the power placing him on furlough.—*Vol. 27, p. 188.*

GENERAL AVERAGE.

904. The obligation to contribute towards a loss sustained by some for the benefit of all, does not depend on the terms of any written instrument between the parties, but upon a general rule of maritime law; and the rule is operative in all cases, unless excluded by the express stipulation of the parties.—*Vol. 8, p. 279.*

905. A party who is required to sign a general average account before the delivery of his goods, and who enters a written protest, believing the adjustment to be wrong, is not concluded by signing the account, nor does he thereby lose any right to have the error corrected.—*Vol. 18, pp. 144, 145.*

906. The owner of a brig presented a claim for general average formerly disallowed by Comptroller Parris, (1848,) no new and material evidence being furnished. Held that the claim is *res adjudicata* and must stand disallowed.—*Vol. 25, p. 183.*

907. In a claim against the United States for general average contribution, the protest, the evidence of the particular loss, the survey, and vouchers of the expenditures, must be filed.—*Vol. 28, p. 28.*

908. Property belonging to the government must contribute towards

general average, under the same circumstances, and to the same extent, as that of private individuals.—*Vol. 8, p. 279.*

909. All property, public or private, saved by common expenses and labor, should pay that expense in proportion to its value.—*Vol. 20, p. 441.*

910. The United States contributes to general average the same as individuals.—*Vol. 21, pp. 420, 421.*

911. The sound value of articles on which contribution is to be apportioned is to be estimated at the place of delivery, deducting freight and charges.—*Vol. 8, p. 281.*

912. The value of the goods on board which are sound are to be taken into consideration in the adjustment of general average, for a party cannot be required to pay for saving that which is worthless when saved.—*Vol. 19, p. 372.*

913. Where a part of the cargo mentioned in the bill of lading is thrown overboard for the safety of the vessel and other parts of the cargo, that loss should be remunerated by general average, assessed on vessel, freight, and cargo saved.—*Vol. 11, p. 424.*

914. A vessel laden with coal for New Orleans met with disaster at sea, and to save ship and cargo voluntarily sacrificed a portion of the latter. Held that in order to determine in general average the government's proportion of liability, the net value of the cargo at New Orleans, after deducting freight and charges, must be taken.—*Vol. 30, pp. 258, 259.*

915. Certain property belonging to the United States on board a private ship was, together with other portions of the cargo, jettisoned and a general average made.

The agents in San Francisco of the owners of the ship became also the agents of those concerned in the general average, and, as such, received the amount due the government in respect of it. Held that the government would not pay to the owners the whole freight due, and look to the agents for their share in the general average, but would deduct that sum from the freight.—*Vol. 15, p. 147.*

916. When coal has been jettisoned for the safety of all, it should be made the subject of general average contribution by the cargo, ship, and net freight, and the adjustment must be produced before the accounting officers can determine the precise liability of the United States.—*Vol. 25, p. 128.*

917. The master of a vessel while under charter-party of affreightment jettisoned a portion of her cargo, and of the remainder transhipped the greater part to another vessel. Held that the owner's claim for general average contribution for repairs was not valid.—*Vol. 23, pp. 531, 533.*

918. If the stranding be involuntary, and the cargo be saved, in whole or in part, no general average is due, but every expense, except the wages and provisions of the crew, necessarily incurred during the detention for the benefit of all concerned, constitute a general average.—*Vol. 11, pp. 439, 508; vol. 8, p. 280.*

919. When a vessel is accidentally stranded in the course of her voyage, and by labor and expense is set afloat, and completes her voyage with her cargo on board, the expense bestowed for this object, as it produces benefit to all, is a charge upon all, according to the rules of apportioning general average.—*Vol. 12, p. 366.*

920. The expense of setting afloat, with her cargo on board, a vessel accidentally stranded, is a proper charge for general average.—*Vol. 16, p. 193.*

921. When a ship is voluntarily stranded to prevent the utter destruction of both ship and cargo, the damages resulting therefrom are to be borne as general average assessed on the ship, freight, and cargo.—*Vol. 11, p. 255.*

922. A vessel laden with subsistence stores was stranded on the coast of Florida. In that condition a United States officer took possession of the vessel and saved the cargo. Held that the loss was not voluntarily incurred for the benefit of all; that the United States have a fairer claim for salvage than the owners have for a general average contribution from the United States, and that it would be as contrary to justice as to law, that the party whose exertions saved the vessel and cargo should, instead of receiving a reward, be called upon to bear the greater portion of the loss.—*Vol. 19, pp. 466, 467.*

923. The settled rule for ascertaining the contributory value of freight is to deduct one-third from the gross freight.—*Vol. 8, p. 280.*

924. The expenses of repairing the ship, if not occasioned by voluntary sacrifice, are not a subject of general average.—*Vol. 8, p. 280.*

925. Where an injury arises from the perils of the sea, and the ship is compelled to go into port to refit, the expense of towing her into port, and the wages and provisions of the crew during the detention, constitute the subject of general average.—*Vol. 9, p. 356; vol. 8, p. 280.*

926. Whatever be the nature of injury, whether arising from a voluntary sacrifice or a mere peril of the sea, the wages and provisions of the crew of the vessel from the time of putting away from the port, the expenses of unloading, reloading, storage, surveys, and other expenses necessarily incurred during the detention for the benefit of all concerned, may be charged as general average.—*Vol. 18, p. 214.*

927. When the ship and cargo suffer damage from the casualties of the sea, and not from voluntary sacrifice for the preservation of the vessel and cargo, no part of the expense of repairs is chargeable as general average.—*Vol. 12, pp. 11, 30.*

928. The ship *Ocean Express*, under charter party of affreightment, while under the control of the pilot and being towed by a steamer, injured her bottom on a shoal in the channel near Hilton Head. Held that the owners were not entitled to cost of repairs and demurrage for detention for discharge and repairs; that the words of the charter party, "to return the vessel in the same condition she now is," must be construed to mean the injuries received

beyond ordinary wear and tear from the agents of the government.—*Vol. 24, pp. 52, 53.*

929. When a portion of the spars, rigging, and tackle of a vessel are voluntarily sacrificed for the preservation of vessel and cargo, the loss is properly reimbursable by general average.—*Vol. 12, p. 18.*

930. Pilotage and port duties are items properly included in the amount of losses to be made good by contribution.—*Vol. 12, p. 131.*

931. Goods shipped on deck contribute if saved; but if lost by jettison, they are not entitled to the benefit of general average.—*Vol. 6, p. 456.*

932. Goods shipped on deck, if thrown overboard, are not entitled to the benefit of general average.—*Vol. 17, pp. 405, 406.*

933. When a vessel is not seaworthy at the commencement of the voyage, and the expenses for repairs were incurred in consequence of such unseaworthiness, the owner has no claim for contribution in the nature of general average.—*Vol. 8, p. 229*

934. A vessel not under charter, but agreeing to carry cargo at a fixed price named in the bill of lading, leaked badly after loading and before sailing, so that she had to be unloaded and repaired. Claim was made for contribution in general average. Held that the seaworthiness of the vessel being a condition precedent to recovery, the claim must be disallowed.—*Vol. 30, pp. 356, 357.* FREIGHT, 900.

GUARDIAN.

935. Payment may be made to the guardians of minors, who, while under guardianship, served themselves, in the Pacific ocean, on the coast of California and Mexico, &c., who have received an honorable discharge and are entitled to receive the additional compensation authorized by the act for such service in their own right. But the additional compensation or extra pay to which minors may be entitled in consequence of service so rendered by a father or other person who has since died, which would have been due the same if living, cannot be paid to the guardian of the children of such father, or the guardian of the heirs of such other person, but it must be paid to the legal representatives of such deceased persons.—*Vol. 16, pp. 325, 326.*

936. A guardian is not entitled to receive pay due to heirs who have attained their majority.—*Vol. 16, p. 174.*

937. Payment of an amount due a deceased person, for articles purchased by the Navy Department, may be made to the guardian of the children of the deceased, where it appears by the certificate of the probate court that the wards of the guardian are the sole heirs, and also that the debts of the deceased have been paid, and the estate closed by a settlement of the administrator's account; otherwise, payment should be made to the administrator.—*Vol. 14, p. 206.* EXECUTORS AND ADMINISTRATORS, 836.

938. As a general rule, payment of any sum, due from the United States, to an officer who has become insane, can be made to his legally appointed guardian only.—*Vol. 11, p. 200.*

939. No person, but a parent, has a right to receive money belonging to a minor until he has taken out from the proper court letters of guardianship, and a certificate that they have been issued must be sent to the Auditor's office before the amount due a minor can be paid to the guardian.—*Vol. 6, p. 166.*

HOLIDAYS.

940. The twelfth section of the law of July 4, 1836, (5 Stat., 112,) expressly directs that the public offices shall be kept open for the transaction of public business every day except Sundays, Christmas, and the Fourth of July. On all other days than those excepted, the office (Comptroller's) must be opened and a sufficient number left in charge.—*Vol. 31, p. 377.*

HORSES.

I. LOST.

II. USE AND RISK.

I.—LOST.

941. In order to sustain a claim for a horse lost by abandonment, in consequence of the United States failing to supply sufficient forage, the claimant must adduce the evidence of the officer under whose command he served when the loss occurred.

The rules also require that the evidence should, in case the claimant was remounted after the loss, state when he was remounted, how long he continued so, and explain whether the horse whereon he was remounted had not been furnished by the United States, or been owned by another mounted militia-man or volunteer.—*Vol. 9, pp. 607, 623.*

942. Soldiers, owners of horses shot by order of the commanding officer on account of contagious disease, are not entitled to pay therefor under the act of March 3, 1849.—*Vol. 31, p. 107.*

943. Where a claim is made for a horse destroyed or abandoned by order of the commanding officer, it is required that the order therefor of the commanding officer be produced.—*Vol. 9, p. 425.*

944. Under the act of August 23, 1842, (5 Stat., 511,) horses shot by order of the commanding officer are embraced within the term "*destroyed.*" And only those shot by unavoidable accident are embraced within the second class of cases mentioned in the act, those "*shot or otherwise lost.*"—*Vol. 9, p. 425.*

945. A claim for a horse turned over to the service of the United States, must be supported by the deposition of the claimant, declar-

ing that he has not received from any officer or agent of the United States any horse, saddle, bridle, or equipments, in lieu of the property so turned over, nor any compensation for the same.—*Vol. 9, pp. 576, 616.*

946. By the rules prescribed by the Secretary of War, to establish a claim for a horse turned over to the service of the United States, the receipt or certificate given for the property by the officer of the United States, to whom the same was delivered, must be produced.—*Vol. 10, p. 235.*

947. The 3d section of the act of March 3, 1849, (9 Stat., 415,) assigns to the Third Auditor the examination and allowance of all claims for horses, &c., lost in service, and makes no provision for an appeal to, or revision by, the Second Comptroller.—*Vol. 17, p. 29.*

See sec. 5, act March 3, 1863, extending to steamers, &c.; and act of July 28, 1867, giving revisal to Comptroller, (14 Stat., 327, sec. 8.)

948. In the case of the heirs of Daniel Deadrich, appealed from the decision of the Third Auditor, upon a claim for lost horses, held that, under the law of March 3, 1849, (9 Stat., 415,) final jurisdiction in such cases vested in the Third Auditor.—*Vol. 20, pp. 89, 155. Supra, 947.*

949. Officers of the army have no right to hire and keep horses for special purposes without proper authority.—*Vol. 20, p. 510.*

950. Payment for loss of horse and equipments is not barred by the death of the soldier. The obligation can only be cancelled by actual payment, and if the soldier dies before being paid, his heirs have the same right to collect from the United States as from a private person.—*Vol. 29, p. 260.*

951. In a claim for value of four horses belonging to a lieutenant colonel of cavalry, which, during his absence on sick leave, were taken to remount men of the regiment, objection was made by the Quartermaster General that a lieutenant colonel was entitled to but two horses and that number only should be paid for. Held, however, that by Revised Army Regulations, par. 1123, forage is issued to officers for four horses if actually kept in the service in time of war, but that even if the claimant had owned and kept in service a number of horses in excess of those allowed by regulations, there is no rule or law which will allow the government to appropriate his private property for public services without just compensation.—*Vol. 30, pp. 556, 557.*

II.—USE AND RISK.

952. The forty cents per day to which the mounted volunteer is entitled for the use and risk of his horse includes the expense of shoeing.—*Vol. 6, p. 291.*

953. The second section of the act of March 19, 1836, (5 Stat.,

7,) provides that "the officers of all mounted companies, &c., shall be entitled to forty cents per day for the use and risk of each horse." This provision includes staff officers who hold the rank of company officers, but does not include field officers of the line.—*Vol. 6, p. 549; vol. 7, pp. 116, 422; vol. 8, p. 180; vol. 10, p. 339.*

954. Under the second section of the act of March 19, 1836, (5 Stat., 7,) mounted officers of a regimental staff of volunteers or militia, and non-commissioned officers whose duties require them to be mounted, are entitled to forage and pay for the use and risk of their horses.—*Vol. 6, p. 549.*

955. No allowance can be made to a private volunteer in the military service for the use and risk of his horse, unless he shall have kept himself provided with a serviceable horse during the time for which pay is claimed.—*Vol. 13, p. 284.*

956. Payment for use and risk of horses to non-commissioned company officers detached for staff duty is disallowed after the act of July 17, 1862, sec. 10, (12 Stat., 595.)—*Vol. 25, p. 407.*

957. There is no law allowing anything to field or staff officers for use and risk of horse. Act of March 19, 1835, (5 Stat., 7, sec. 2;) act of May 13, 1846, (9 Stat., 10, sec. 3.)—*Vol. 23, p. 369.*

958. In claims for the use and risk of horses subsequent to the act of June 20, 1864, the rule is to limit payment to the date when official notification of the passage of the act was received where the troops were serving. The date should be certified on the muster roll, otherwise the War Department should fix the time limiting the allowance.—*Vol. 28, p. 754.*

959. Claims of the Missouri State militia for 40 cents per day for use and risk of horses, &c., beyond date of notice of the repealing law, June 20, 1864, cannot be paid without further legislation.—*Vol. 29, p. 79.*

960. In the case of claimants of the 1st Dakota cavalry for compensation of 40 cents per diem for use and risk of horses, it was decided by the Secretary of War that November 1, 1864, should be regarded as the date when official notice reached the claimants of the passage of the act of June 20, 1864, (13 Stat., 145, sec. 9,) abolishing such allowance.—*Vol. 30, p. 65.*

HOSPITAL SAVINGS.

961. The purchase of hospital savings by surgeons is not allowed under the regulations. They constitute a hospital fund and are simply a credit with the government; and it is the duty of the surgeon, though not the proper custodian of the money, to see that the hospital fund is expended in the manner directed by paragraph 19, Subsistence Regulations of 1861.—*Vol. 26, p. 62.*

HOSPITAL STEWARDS.

962. A soldier who enlists expressly as hospital steward cannot legally be compelled to perform duty in the ranks as a private soldier. On his discharge, he is entitled to extra pay as hospital steward.—*Vol. 11, p. 20.*

963. A private soldier, temporarily on detached duty as hospital steward, is entitled to the pay of a sergeant; but on his discharge is entitled to the travelling allowances of a private only.—*Vol. 13, p. 20; vol. 19, p. 214.*

NOTE.—Modified by act of April 16, 1862, (12 Stat., 378,) granting thirty dollars per month.

964. Hospital stewards in Oregon and California are entitled to the extra pay under the act of September 28, 1850. (9 Stat., 504.)—*Vol. 14, pp. 211, 212.*

965. Claimant having enlisted as hospital steward and not serving exclusively with a body of troops of more than four companies, is only entitled to twenty dollars per month. See Army Regulations, par. 1289, ed. 1861.—*Vol. 25, p. 63.*

NOTE.—Act of April 16, 1862, (12 Stat., 378, sec. 1,) gives thirty dollars per month. See, also, act of June 20, 1864, (13 Stat., 144,) which gives \$33, \$25, and \$23 to hospital stewards of the first, second, and third classes, respectively.

966. Previous to the law of June 20, 1864, fixing the pay of hospital stewards, where one was employed and paid as hospital steward when discharged, he is entitled to travel pay as hospital steward, although he may be named only as private in his certificate of discharge.—*Vol. 27, p. 189.*

967. If the soldier be regularly employed and discharged as hospital steward, he is entitled to the travelling allowances of that grade.—*Vol. 19, pp. 214, 215.*

968. Hospital stewards are not entitled to the extra pay and ration of whiskey authorized by an act to regulate the pay of the army, when on fatigue duty. Acts of March 2, 1819, (3 Stat., 488;) August 4, 1854, (10 Stat., 576, sec. 6.)—*Vol. 16, p. 406.*

969. Hospital stewards are entitled to pay when on duty in temporary hospitals.—*Vol. 18, pp. 31, 32.*

970. A hospital steward of the regular army, discharged because his services were no longer required, is considered, under the rule laid down by the War Department, as entitled to bounty to the same amount and on the same conditions as if he had belonged to the volunteer force.—*Vol. 28, p. 522.* PAY, VII, 1324.

IMPRESSMENT.

971. A brig under contract with the Navy Department by bill of lading to transport coal to New Orleans, was, on her arrival at that

port, ordered to Galveston—the master protesting. Claim was brought for services and cost of repairs of injury by worms, the brig not being coppered. Held that the contract was ended on the arrival and delivery of cargo at New Orleans, and that the order to proceed to Galveston was an impressment and that the claim for per diem and repairs is valid, but the supposed damages must be determined by Congress.—*Vol. 30, p. 334.*

972. A vessel laden with hay, left port for Fort Monroe, Virginia, under contract by bill of lading. On arriving at her destination she was not unloaded, but was taken in tow by a steam-tug and started up the river to City Point, and on the way took fire and became a total loss. Held that the original voyage contemplated in the contract terminated at Fort Monroe, and that a second voyage was then undertaken without the consent of the owners, the services of the vessel being rendered under impressment, and that the entire responsibility for the safety of the vessel devolved upon the government.—*Vol. 30, pp. 390, 391.*

973. A steamer having a barge in tow, and each laden with flour, was detained at Blannerhassett's island, in the Ohio river, by low water, where she was impressed into the military service. Claim was made for per diem of boat and barge, damage to boat and furniture, and freight on cargo; held that the claimants are entitled to *per diem* for both steamer and barge for the time actually used by the government, and until returned to the owner; that Congress only can be appealed to for the damages to boat and furniture, and that freight is due *pro rata itineris peracti*.—*Vol. 31, pp. 112, 113, 114.*

974. Certain steamboats, while impressed into the military service of the United States, were destroyed by fire, without any fault or negligence of the owners. The risks taken by the underwriters were liquidated and paid for, and claim by them, as subrogated to all the rights of the assured, made under the act of March 3, 1849, for the amount thus paid; but it was held that the principle of equitable subrogation applied only in favor of the government, the underwriters, as for the owners, having, by their policies of insurances, *pro tanto*, agreed to incur the risk.—*Vol. 29, p. 630.*

975. Where a vessel was impressed into the service by a military commander on the ground that her owners had employed her in illicit trade with the enemy, and the vessel was subsequently released, it was held that a claim for payment for use could not be liquidated, since the claim was one for conversion and damages and did not come within the scope of any existing appropriation.—*Vol. 28, pp. 61, 62.*

976. Claim for the value of mules and horses stampeded and stolen by the Indians while returning from the transportation of quartermasters' stores from the Union Pacific railroad to certain forts in Dakota Territory, the contract providing that on the written application of the owner or his agent, suitable escort should be provided by the military authorities. Held that through the failure of the train master, who was the owner's agent, to ask for escort, the loss

resulted, being the fault or negligence on the part of the owner; that the animals were not in the service of the government either by contract or impressment, under the act of March 3, 1849, (9 Stat., 415, sec. 2,) and that liability must attach to the owners as common carriers.—*Vol. 30, pp. 504–506.*

977. The act of March 3, 1849, is not construed to include claims for vessels or other property designated in the act, if lost while in the naval service of the United States.—*Vol. 31, p. 424.* PROPERTY, I, 1749, 1750; CONSTRUCTION OF STATUTES, 542; CAPTURE, 339.

INDIANS.

978. In all cases where claims arise under an Indian treaty, and are payable by the War Department, the claimants being Indians, payments must be made to the Indians in person, and not to an attorney.—*Vol. 12, p. 510.*

979. In making payments to Indians, it has long been the practice to recognize the right of the father to receive for his minor children.—*Vol. 14, p. 79.*

980. Presents given to Indians should be issued in the presence of the interpreter, or some other respectable person, whose certificate of the facts should be attached to the abstracts of issues.—*Vol. 3, p. 81.*

981. Payments under the appropriation act of September 30, 1850, of the amount of the awards of General W. B. Mitchell, cannot legally be made under powers of attorney or assignment, executed prior to the passage of that act.—*Vol. 14, pp. 103, 154.*

982. Under the 3d article of Cherokee treaty of 1846, all allowances for reservation should be paid by the United States, and are not a proper charge upon the Cherokee fund.—*Vol. 13, p. 54.*

983. Accounts for meals, horse feed, &c., furnished to Indians visiting agencies, and all unvouched expenditures while travelling, must be supported by the oath of the person making out the same, unless satisfactory certificates of disinterested persons can be obtained as to their correctness. But when supplies are furnished or expenses incurred by a regular disbursing officer, his certificate on honor, as to the correctness of his account, will be sufficient.—*Vol. 3, p. 273.*

984. The abstract of issues to Indians should be supported by the certificate of one or more respectable and disinterested persons, that the articles embraced therein were delivered to the Indians in their presence; or when, from the circumstances of the case, such certificates cannot be obtained, the certificate on honor of the agent that all the provisions embraced in the abstract were issued to the Indians must be annexed.—*Vol. 3, p. 276.*

985. When expenditures are incurred for carrying into effect particular stipulations of any Indian treaty, such as for cattle, farming utensils, mechanic's tools, schoolmasters, agriculturists, laborers, &c., separate abstracts of such expenditures must be made, and the separate and distinct articles of such treaty or appropriations must

be noted on the vouchers, or on the abstract, that the expenditures may be carried to their proper heads.—*Vol. 3, p. 277.*

986. When the commissioners under the 17th article to adjudicate claims for Indian reservations arising under the treaty with the Cherokees, of 1835–6, appointed appraisers to examine and report the value of a reservation for which a claim had been presented to them, and before the appraisers had made their report the board was dissolved; Held that the action of the commissioners amounted to a sufficient adjudication to authorize the payment of the claim under the act of July 2, 1836, (5 Stat., 73,) if afterwards found to be valid.

But no interest can be allowed by the accounting officers upon such a claim, unless under special authority of Congress.

None of the appropriations contained in the act of July 2, 1836, are applicable to the payment of claims for Indian reservations, under the treaty with the Cherokees of 1835–6.

When a legal contract has been entered into between the claimant and an attorney, for the prosecution of such a claim, for a contingent fee of twenty per cent. upon the amount ultimately allowed, and an assignment to the attorney of that proportion of the amount allowed is concluded in the contract, and authority given him to receive it at the treasury, such agreement will be recognized as binding by the accounting officers after the consideration has been fulfilled, unless it be impeached by such evidence as would be sufficient to invalidate it at law or in equity.

But when a contract is executed between the claimant and an attorney for the payment by the former to the latter of twenty per cent. of the amount ultimately allowed upon the claim, in consideration of service to be rendered in prosecuting it, but without making any particular assignment of or lien upon the particular sum allowed, or authorizing the attorney to receive any part of it from the treasury in payment of the compensation agreed on, such contract will not be enforced by the accounting officers.

The last clause in the Indian appropriation bill of August 30, 1852, prohibits the payment of any money in that act appropriated, under any pre-existing contract whatever, made by an Indian with an agent or attorney.

This provision is constitutional.

And applies to the case of a white man claiming in behalf and for the benefit of an Indian wife and children.

And authority given by the act for the payment of a claim out of previously existing but inapplicable appropriations, is an appropriation of money within the meaning of the last section of the act.

And the direction in that act that a claim shall be paid as previously "allowed by the Second Auditor," does not take it out of the operation of the last section, notwithstanding the Auditor had made twenty per cent. of the allowance payable to the attorney in pursuance of the contract.—*Vol. 15, pp. 272, 311, 398.*

NOTE.—See third section deficiency bill, July 21, 1852, (10 Stat.,

24;) third section Indian appropriation bill, August 30, 1852, (10 Stat., 56;) third section Indian appropriation bill, March 3, 1853, (10 Stat., 239,) making null and void powers of attorney from Indians and contracts with them, &c. Payment must be made directly to the Indians, unless their imperious interest requires otherwise, under special direction of the President.

The last four points sustained by the opinion of Attorney General Crittenden, September, 1852

987. An Indian agent is entitled to his salary and allowances from the time he takes the oath of office and commences the performance of duty.

His compensation must cease with his term of office, and if he remain at the agency afterwards to assist his successor, he cannot charge the government for his service.—*Vol. 15, p. 260.*

988. The action of the Department of the Interior upon claims against Indians, arising under the 17th section of the act of June 30, 1834, (4 Stat., 731,) is final, and cannot be revised by the accounting officers.—*Vol. 15, p. 343.*

989. When a distillery in the Indian country is destroyed as a nuisance by the Indian agent, the accounting officers have no power to allow damages to the owner.—*Vol. 11, p. 221.*

990. The disposition of the Indian annuities is entirely within the control of the Secretary of the Interior; and his direction as to the persons to whom, and the time and manner in which they are to be paid, will be regarded as final by the accounting officers.—*Vol. 16, p. 15.*

INDIAN AGENT.

991. The final settlement of the accounts of Indian agents is not within the exclusive jurisdiction of the Commissioner of Indian Affairs. The action of that officer is administrative merely, and the duty of final revision and settlement belongs to the accounting officers.—*Vol. 15, p. 442.*

992. An Indian agent who pays the balance of salary due his predecessor, who is at the time a debtor of the United States, does so in violation of law. Act of January 25, 1828, (4 Stat., 246.)—*Vol. 19, pp. 68, 69.*

993. Arrears of salary should not be paid to an ex-agent until it be ascertained whether he has accounted for the money and public property that may have been in his hands. Act of January 25, 1828, (4 Stat., 246.)—*Vol. 19, pp. 132, 133.*

994. Advances to Indian agents are made through the superintendents, except in cases where the agent needs the money and the superintendent is absent, or where inconvenience and delay would be the result of making the advance through the superintendent, when the agent receives the money directly from the treasury. The responsibility of an officer to whom advances are made is fixed by charging

him in the accounting offices with the requisition upon which a warrant is issued for the amount advanced. Act of July 9, 1832, (4 Stat., 564.)—*Vol.* 18, *pp.* 20-22.

INDORSEMENT.

995. An indorsement in blank upon a certificate of arrears of pay and bounty is a valid acquittance to the United States, but to entitle the holder to receive payment the indorsement should be in full and witnessed according to usage; see act of February 26, 1853, (10 Stat., 170.)—*Vol.* 28, *p.* 514.

INSPECTORS.

996. The inspectors employed at Springfield and Harper's Ferry can be allowed no greater compensation than that authorized by the second section of the act of August 23, 1842, (5 Stat., 512.)—*Vol.* 11, *p.* 459.

INTEREST.

997. Interest can in no case be allowed by the accounting officers, upon claims against the government, either in favor of a State or an individual. But in cases where the claimant has been compelled to pay interest for the benefit of the government, it then becomes a part of the principal of his claim, and, as such, is allowable. Such is the case of a State which has been obliged to raise money upon interest for the suppression of hostilities against which the United States should protect her.

In such cases the amount of interest actually and necessarily paid will be allowed, without reference to the rate of it.—*Vol.* 15, *pp.* 34, 280.

998. Every officer, agent, or other person who receives public money which he is not authorized to hold for disbursement, shall pay therefor the sum of six per cent. after it was due and payable into the treasury. Act of March 3, 1797, (1 Stat., 512, sec. 1.)—*Vol.* 19, *pp.* 140, 141. DISBURSING OFFICERS, I, 751.

999. Interest on balances due the United States is chargeable at the rate of six per cent. per annum, from the time when the money was received. Act of March 3, 1797, (1 Stat., 512.)—*Vol.* 18, *p.* 105.

1000. Interest is not allowed except granted in express terms by the act granting relief, or on the opinion of the Attorney General that it is due.—*Vol.* 25, *pp.* 344, 699. DISBURSING OFFICER, 732, 751.

1001. Interest cannot be allowed in the settlement of any claims against the government, unless authorized by express enactment of Congress, or inevitable inference from the general terms of a statute.—*Vol.* 30, *p.* 610.

1002. In regard to partial payments of amounts due the United States, so far as interest is concerned, the correct general rule is to calculate interest up to the period when a payment is made, to satisfy which the payment should be first applied; and if it exceeds the interest due, the balance is to be applied towards the payment of the principal; but, if the payment be not sufficient to discharge the interest, the principal is not to be increased by adding to it the balance of interest due at the time, so as to produce interest on interest.

NOTE.—5 Stat., (Smith *vs.* Administrator of Shaw, 2 Wash. C. C. R., 167.)—*Vol.* 27, *p.* 174.

INTERPRETER.

1003. A claim was presented by (Thomas Laughlin) an enlisted soldier for services as interpreter in Mexico, at \$2 per day. The Second Comptroller decided, November 27, 1849, that he could receive additional pay for this service only under the act of March 2, 1819, (3 Stat., 488.)

The same decision was reiterated by the Second Comptroller August 3, 1854, in the case of Corporal Robert B. Jarvis, who charged \$100 per month from August 28, 1847, to July 18, 1848, as interpreter to Colonel George W. Hughes at Jalapa and Perote.—*Vol.* 27, *p.* 177.

JUDGE ADVOCATE.

1004. Under the 5th section of the act of July 17, 1862, (12 Stat. 598,) which declares that the pay and emoluments of the Judge Advocate General of the army shall be those of a colonel of cavalry, that officer, in addition to the pay of his assimilated rank, is entitled to the additional per diem of \$1 25 (see paragraph 1138, Army Regulations) for performing the duties of Judge Advocate of a general court-martial.—*Vol.* 28, *p.* 38. COURT-MARTIAL, V, 649.

JUDGMENT OF COURT.

1005. The mere finding of a court and jury has not been deemed sufficient to authorize the accounting officers of the treasury to give a credit beyond the admitted balance on the books of the treasury.—*Vol.* 16, *pp.* 371–373.

NOTE.—In such a case, as when the officer is sued for \$1,000, claimed by the United States, and the jury find a balance of \$1,500 in his favor, the officer will be allowed in the settlement of his account \$1,000 to balance it, but will not be paid the \$1,500 which the court and jury found in his favor. DISBURSING OFFICER, I, 742; SUIT, 1962; MEDICAL ATTENDANCE, 1027; PAY, V, 1254.

JUSTICE OF THE PEACE.

1006. A justice of the peace is not a court of record. The regulations of the department require that the authority of a justice of the peace to administer oaths, take depositions, &c., shall be certified by the clerk of court of record.—*Vol.* 18, *p.* 39.

LAND.

1007. The purchase of land in behalf of the United States is forbidden, except under the law authorizing the purchase. Acts of May 1, 1820, sec. 7, (3 Stat., 568;) July 17, 1862, (12 Stat., 596, sec. 18;) joint resolution September 11, 1841, (5 Stat., 468;) Opinions Attorneys General, vol. 4, pp. 533, 534; vol. 5, p. 15; 12 Howard R., 98.—*Vol.* 25, *pp.* 767-770; vol. 28, *pp.* 480, 482.

See also act June 12, 1866, (14 Stat., 62.) See also sec. 4, act February 22, 1867.

1008. Money drawn from the appropriation made by act of March 3, 1857, (11 Stat., 191,) for the commencement of a fort opposite Fort Schuyler, New York, was paid for the purchase of land adjoining, and on settlement of the agent's accounts, the voucher for this expenditure was excluded on the ground that the said act did not relate to the purchase of land, and that the laws of Congress and the regulations for the army prohibit the purchase of land except under a law authorizing it. (See act May 1, 1820, 3 Stat., 568; Army Regulations, par. 1058; Opinions of Attorneys General, vol. 4, pp. 533, 534; vol. 5, p. 15; and 12 Howard R., 98.)—*Vol.* 30, *pp.* 425, 426.

LEASE.

1009. B, termor for years, is ousted by the United States for military purposes. A, the lessor, brings suit for breach of condition by B, and, under judgment of court, purchases the unexpired lease. Held that the non-payment of quarterly rent was not a waiver on the part of lessee of any of his rights prior to the rendition of the judgment of the court, and that the lessor is estopped from demanding rent prior to the date of sale.—*Vol.* 25, *pp.* 505, 506.

1010. Lessor cannot claim, prior to judgment of court, the sum due for rent from the United States any more than the other creditors of termor.—*Ibid.*

LEGAL EXPENSES.

SEE *Professional Services.*

1011. It has been the practice to reimburse to officers such expenses as have been incurred by them, when prosecuted before the civil courts, for acts done in the line of their duty.—*Vol.* 12, *p.* 319.

1012. It is customary to allow compensation to an attorney for his services in procuring the liberation of a seaman by *habeas corpus* who is under arrest on civil process.—*Vol. 14, p. 30.*

NOTE.—See Opinions Attorneys General, February 18, 1830, vol. 2, p. 319, that a district attorney has a claim to compensation for a *quantum meruit*, for services rendered in a State court, which must be graduated by a reasonable estimate of the value of his services. See, also, p. 26, Red Book.

1013. The district attorney at New Orleans was allowed \$250 for an examination of the title to lands selected for the site of a naval depot at New Orleans.—*Vol. 13, p. 50.*

1014. And where an agent of the Freedmen's Bureau incurred legal expenses in behalf of colored minors who were indentured apprentices, held that, as the laws relating to the bureau make no provision for the payment of such expenses, the claim must be disallowed, it being the practice of the executive departments never to allow for legal expenses except in those cases where United States officers have been prosecuted before the civil courts for acts done in the line of duty.—*Vol. 30, p. 623.*

LIBEL.

1015. Under the act of July 13, 1861, (12 Stat., 257, sec. 6,) two schooners were seized; A, one of the part owners, being a citizen of Virginia. The libel, as to other part owners resident in loyal States, was dismissed, and payment made to them under an appraisement, (for their individual shares.) The share of A, condemned as forfeited, was publicly sold to B and bill of sale given, the vessel having meanwhile been taken by government for military purposes, and payment under the appraisement been made to the loyal part owners. Held that B must be paid, *pro rata*, for his purchase. Until condemnation of the share of A, by judgment of the court, the legal ownership remained in A, and the legal possession in the United States. The military authorities, in the purchase of the shares of the loyal part owners, acquired no right over the share of A; the permissive right to occupy and to use only being granted by the Secretary of the Treasury under the 8th section of the act of July 13, 1861, (12 Stat., 257.) The decree of the court and the bill of sale are *res adjudicata* in respect of the share of A, and the accounting officers cannot inquire into their legality or justice.—*Vol. 25, pp. 553, 554, 651-658.*

MARINE HOSPITAL.

1016. The marine hospital cannot be regarded as any part of "the executive or legislative departments of the government," within the meaning of the 2d section of the act of August 31, 1852, (10 Stat., 97,) known as the 20 per cent. law.—*Vol. 15, p. 439.*

MEDICAL ATTENDANCE.

1017. By the Regulations for the Medical Department, paragraph 20, private physicians are to be employed to accompany troops or detachments on a march, or in transports, only by order from the War Department, or in special cases, by order of the officer directing the movement, when the contract must be accompanied with a particular statement of the circumstances which render the employment of a private physician necessary.—*Vol. 7, p. 186.*

1018. A private physician may be employed to render medical services at two military posts at the same time, and receive a compensation adapted to the nature and extent of his services.—*Vol. 12, p. 108.*

1019. The revised recruiting regulations of 1847, paragraph 83, forbid the employment of private physicians for the purpose of examining recruits, without special authority from the Adjutant General.—*Vol. 13, pp. 161, 167.*

1020. An account for medical attendance and medicines furnished to a military storekeeper, being an emolument and forbidden by act of August 23, 1842, (5 Stat., 512,) is not chargeable to the United States.—*Vol. 14, p. 250.*

1021. An account of a private physician, for medical services and medicines, must be sustained by other evidences than his own oath.—*Vol. 12, p. 150.*

1022. Under the general regulations of the army, paragraph 1214, edition of 1841, medicines and medical attendance may be furnished to the officers, non-commissioned officers, musicians, and privates, (and to their families,) of the marine corps.—*Vol. 8, p. 144.*

1023. In March, 1848, a marine officer in charge of the recruiting rendezvous in New York was sick and employed a private physician, no medical attendance being furnished by the government, and no surgeon attached to the rendezvous. The account of the physician was allowed by the Second Comptroller.—*Vol. 8, p. 22.*

1024. The act of March 3, 1835, (4 Stat, 755,) regulating the pay of the navy, prohibits any special allowance to the officers therein named for expenses incurred by reason of sickness, whether for medical attendance or otherwise.—*Vol. 8, p. 197.*

1025. When any officer of the navy, while attached to a receiving ship, employed on shore duty, or on leave of absence, shall be admitted into a naval hospital, he will be charged with the costs of his subsistence while he may remain in such hospital, but in no case shall such charge exceed the value of the navy ration, viz., twenty cents per day, which will be deducted from the officer's accounts and credited to the navy hospital fund.—*Regulation of the Secretary of the Navy under the law of March 3, 1851; and June 3, 1851.*

1026. Since the passage of the act of March 3, 1835, (4 Stat., 755,) which greatly increased the pay of officers of the navy, no

allowance can be made to a private physician for medical services rendered to an officer of the navy.—*Vol. 13, p. 319.*

1027. An officer (Lieutenant Jones) was injured at the riot in Paris in December, 1851. One thousand dollars was sent to him by the Secretary of the Navy to pay sick expenses, &c. His medical expenses were disallowed by the accounting officers. Suit was brought in circuit court in Washington. Judgment for Jones. Appeal by United States to Supreme Court. Judgment of circuit court affirmed, (18 Howard, 93;) Judges Catron and Daniel dissenting. This decision is construed by the accounting officers as applying only to the case in which it was made.—*Vol. 27, p. 189.*

1028. Medicine and medical attendance for an officer or his servant are considered as allowances, and expenses therefor may be paid to an officer when they could not be furnished by the United States.—*Vol. 17, pp. 56, 57.*

1029. The regulations do not authorize the purchase and issue of medicines to engineer laborers in the public employment except when furnished by a physician employed according to regulations.—*Vol. 18, p. 352.*

1030. A soldier, under his contract of enlistment, is entitled to medical attendance and nursing while sick as much as he is to pay, clothing, or subsistence.—*Vol. 19, p. 264.*

MEDICAL CADETS.

1031. The 1st section, act of April 16, 1862, (12 Stat., 378,) supersedes the 5th section, act of August 3, 1861, (12 Stat., 288,) in respect of pay to medical cadets, and assimilates it to that of hospital stewards and one ration per day.—*Vol. 26, p. 158.*

MEXICAN WAR.

1032. April 24, 1846, is the time fixed upon as the commencement of the war with Mexico.—*Vol. 14, p. 57; vol. 12, p. 57.*

1033. The term of service of troops enlisted "during the war" with Mexico, extends not merely to the termination of hostilities, but till they shall have been regularly mustered out of service.—*Vol. 15, p. 61.*

MILITARY ACADEMY.

1034. The act of July 20, 1840, (5 Stat., 397,) equalizing the compensation of the commandants of cadets and the professors of mathematics at the Military Academy, is superseded in this respect by the act of September 16, 1850, (9 Stat., 459,) which gives to each of these officers \$2,000 per annum, besides the service rations to which they may respectively be entitled.—*Vol. 15, p. 466.*

1035. It has been decided by the Attorney General that a soldier

employed as an assistant librarian at the Military Academy at West Point may be paid an allowance of ten dollars per month.—*Vol. 15, p. 79.*

NOTE.—Legalized by act of April 23, 1856, (11 Stat., 5,) and in the case presented under this act it was held that the 35th section of the act of March 3, 1863, (12 Stat., 736,) does not prohibit payment of the allowance.—*Vol. 28, p. 307.*

1036. Officers detailed as instructors in the Military Academy do not come within the provisions of the law allowing ten dollars per month to the commanders of companies for duties and responsibilities in respect to the clothing, etc., of the company.—*Vol. 2, p. 302.*

NOTE.—Professors of the Military Academy at West Point are "commissioned officers of the army."—*See letter of Secretary of War, May 27, 1857.*

1037. A cadet who leaves the Military Academy upon a forced resignation, is entitled to the same allowances as one who leaves upon a voluntary resignation, and no more.—*Vol. 8, p. 356.*

1038. The increase of pay allowed by the second section of the appropriation act of March 3, 1855, (10 Stat., 703,) to certain professors at West Point, commences from the date of the act and not from the commencement of fiscal year.—*Vol. 18, p. 281.*

1039. Under the 6th section of the act of July 13, 1866, (14 Stat., 92,) which authorizes the selection of superintendent of the Military Academy to be made from any arm of the service, it is held that he is not required to give bond for disbursing the funds of the institution, his authority as disbursing officer being derived from the 27th section of the act of July 5, 1838, (5 Stat., 256.)—*Vol. 28, p. 497.*

MILITARY ASYLUM.

1040. The stoppage of twenty-five cents per month directed by the act of March 3, 1851, (9 Stat., 595,) for the benefit of the Military Asylum, is not to be made from the arrears due a deceased soldier, &c.—*Vol. 15, p. 228.*

1041. Pensioners on account of wounds or disability received while in service, are entitled to the benefit of the Military Asylum, provided they transfer their pensions to it, even though they may not have contributed to the funds of the institution. Act March 3, 1851, (9 Stat., 596, sec. 5.)—*Vol. 17, p. 338.*

1042. Soldiers who are pensioners for disability incurred in the war with Mexico, or for disabilities incurred since the act of March 3, 1851, (9 Stat., 596,) are entitled to the benefit of the Military Asylum without contributing to its support. Act March 3, 1851, (9 Stat., 596.)—*Vol. 21, pp. 430-432; President's Message, part 2, 1855-'56, p. 101. FINES, 860.*

MILITARY COMMISSION.

1043. Members of military commissions constituted for inquiry into or trial of military offences are entitled to receive the same compensation as members of courts-martial. See letter of Adjutant General, July 30, 1863.—*Vol. 25, pp. 188, 189; vol. 28, p. 617.*

1044 The decision of the Secretary of War (July 30, 1863,) recognizing military commissions as constituted for inquiry into or trial of military offences, is admitted to be conclusive as to their character when organized in the military service, and therefore exempts them from the inhibition of pay contained in section 25, act of August 26, 1842. (5 Stat., 523.)—*Vol. 25, pp. 280, 281.*

MILITARY CONTRIBUTION FUND.

1045. The application of the "military contribution fund" of the "Mexican war" is wholly within the control of the President and Secretary of War, and payments made on the order of the latter will not be reviewed or questioned by the accounting officers. Acts of August 23, 1842, (5 Stat., 508;) March 3, 1849, (9 Stat., 412.)—*Vol. 24, pp. 15, 16. QUARTERS AND FUEL, 1288.*

MILITARY STOREKEEPER.

1046. An agent of the quartermasters' department who was appointed military storekeeper and accepted and gave bonds, but did no duty as military storekeeper, was not paid in that capacity and resigned, is entitled to be paid as agent under his contract.—*Vol. 17, pp. 23, 24.*

1047. An acting military storekeeper is not entitled to extra pay, under the act of September 28, 1850, (9 Stat., 504,) for services in Oregon and California.—*Vol. 17, p. 289.*

1048. Military storekeepers can receive no more than their fixed rate of pay or salary and the quarters actually provided for and occupied by them. Act of August 23, 1842, (5 Stat., 512, sec. 2.)—*Vol. 19, p. 475.*

MISNOMER.

1049. When a claim in favor of John M. Cobb was settled at the treasury and, after warrant issued, assigned by John Cobb, and there was no doubt of the identity of the person, the assignment was held to be good. The law knows but one christian original name, and the omission of one or more initials between the christian and surname will have no effect in rendering the assignment defective in point of law. See Opinions Attorneys General, May 17, 1839, vol. 3, p. 467.—*Vol. 27, p. 248.*

1050. If a name as written, though misspelt, be of similar sound

(*idem sonans*) with the true name, it is sufficient; and "von" or "van," being a mere prefix, like "de" in French, may be dropped or assumed without vitiating the signature.—*Vol. 18, p. 59.*

MONEY.

1051. Money deposited to satisfy a judgment recovered against a navy agent and the sureties on his bond will be covered into the treasury by a refunding requisition, and the agent's account closed.—*Vol. 22, pp. 560–562.*

1052. Money taken from deserters, fines, penalties, and forfeitures, received by officers whose accounts are settled by the Second Comptroller's office, are covered into the treasury as "miscellaneous receipts."—*Vol. 28, p. 752.*

1053. All money drawn from the treasury is, by the accounting officers, to be considered as equivalent to specie and charged on the books of the treasury as such. There is no law by which they can take notice of depreciated currency.—*Vol. 10, pp. 145, 461; vol. 6, p. 556.*

1054. When a disbursing officer purchases specie without authority from the head of the department, his charge for the premium paid will be disallowed.—*Vol. 7, p. 388.*

1055. When the transportation of specie becomes requisite from the circumstance of the treasury draft being drawn upon a place other than that at which the agent resides, the necessary expenses are usually defrayed by the government.—*Vol. 12, p. 278.*

NOTE.—See Opinion of Attorney General, July 6, 1848.

1056. Under the act legalizing the use of all money raised in Mexico, &c., a quartermaster was charged with the amount of silver bars returned, as received by him, on sale of captured property, and was credited with a disbursement of a portion of the same, as so much cash. Afterwards, in explanation of his deficiency, he gave evidence that one of the bars was lost or stolen, and wished to have it thus accounted for as property. Held that it must be considered as so much money, and that the accounting officers had no power to give him the credit asked. Case of Lieutenant Gordon, quartermaster. Act of March 3, 1849, (9 Stat., 412.)—*Vol. 22, pp. 151–153.*

1057. Public money stolen from disbursing officers cannot be allowed to the credit of officers in the settlement of their accounts except by special acts of Congress. The laws of May 18, 1828, (4 Stat., 173,) and February 7, 1863, (12 Stat., 641,) provide only for vouchers or public property lost. See acts of May 9, 1866, (14 Stat., 44,) and July 28, 1866, (14 Stat., 345.)—*Vol. 28, pp. 411, 424.*

1058. Claim was made for money in bills of the State of Louisiana and for confederate notes deposited in bank at New Orleans, and, by military orders, turned over to the quartermasters' department and used for the municipal expenditures of the city. Held that by law, 1st sec. act March 3, 1849, (9 Stat., 398) it should have been paid

into the treasury, and that its disbursement, without deposit and reappropriation, was clearly illegal, and the accounting officers are, therefore, not authorized to entertain jurisdiction in the premises. But if this difficulty did not exist, the 1st and 6th sections of act of March 12, 1863, (12 Stat., 820) as interpreted by opinion of Attorney General of July 5, 1865, precluded the accounting officers from settling the claim under the provisions of the act of March 3, 1817, (3 Stat., 366) conferring jurisdiction in respect of claims and demands.—*Vol.* 31, *pp.* 167, 168.

NAUTICAL ALMANAC.

1059. The act of March 3, 1849, (9 Stat., 374,) provided for the appointment of a superintendent of the Nautical Almanac, and the payment of his salary at the rate of \$3,000 per annum.

The naval appropriation act of the following year appropriated, generally, for the expenses of the Nautical Almanac, the whole amount specified in the official estimates of the Navy Department, in which was included the salary of the superintendent. Held, that as this appropriation was for the purposes that would properly include the salary, and was for the whole amount of estimates in which it was specifically embraced, it was within the power of the Secretary of the Navy to continue the payment of it.—*Vol.* 15, *p.* 81.

1060. The accounts of the superintendent for preparing and printing the American Nautical Almanac are subject to the same rules of settlement as the accounts of other officers and agents of the government. Act of January 31, 1823, (3 Stat., 723, sec. 2.)—*Vol.* 18, *pp.* 147–149.

NAVY AGENTS.

1061. Where, under a judicial decision made in the case of a collector, (2 Sumner's R., 575, and also decision of Supreme Court in Dixon's case, 15 Peters, 141,) navy agents had been accustomed to charge their whole compensation for the year in the first quarter, if the percentage on their disbursements reached that amount, held that under the act of February 11, 1849, (Stat., 3,) navy agents, &c., are entitled only to a *pro rata* of the maximum compensation for the entire year.—*Vol.* 19, *p.* 150; *vol.* 6, *p.* 16.

See sec. 34, act of July 18, 1866, forbidding more than *pro rata*, &c.

1062. The allowance to navy agents was, by section 3 of act March 3, 1809, (2 Stat., 536,) fixed at one per cent. commission on public moneys disbursed by them, not to exceed the compensation allowed by law to the purveyors of public supplies, which was \$2,000 a year. On the 3d of March, 1855, in lieu of \$2,000 a year, they were allowed two per cent. on the first \$100,000 disbursed, and one per cent. upon every succeeding \$100,000, not to exceed

\$3,000 per annum, which is fixed as the maximum. The opinion of the Attorney General, of 10th September, 1856, is to the effect that the navy agents then in service were entitled to one per cent. *pro rata* for that part of the official year which had elapsed at the date of the new law, and from the date of that act the compensation to be computed at the rate fixed thereby.—*Vol. 19, pp. 189–191, 284, 396–399.*

NOTE.—As to the origin and employment of navy agents, see Opinions Attorneys General, September, 1819, vol. 1, p. 302, Farnham's edition.—*Vol. 17, pp. 186–189.*

1063. Navy agents are instructed to contract for clerk-hire and office rent, upon the express condition that compensation shall cease whenever the agent shall go out of office, unless otherwise specially ordered by the department.—*Vol. 18, pp. 57, 58.* ACCOUNTING OFFICERS, 48; JUDGMENT OF COURT, 1005.

NAVY HOSPITAL FUND.

1064. Under the act of February 26, 1811, (2 Stat., 650,) one ration per day is to be deducted from the pay of both officers and seamen while in hospital, for the benefit of the naval hospital fund.—*Vol. 5, p. 331.*

NAVY PENSION AGENT.

1065. The annual allowances to navy pension agents for clerk-hire, in lieu of the percentage on payments made to pensioners, will not be continued; and from and after September 30, 1855, they will be allowed two per cent. upon disbursements, but not to exceed \$1,000 per annum. Second section, act of February 20, 1847, (9 Stat., 126.) See resolution July 17, 1862, (12 Stat., 629,) making \$2,000 the maximum allowance.

NOTE.—The act of July 30, 1864, (13 Stat., 225,) allows a compensation of \$4,000.—*Vol. 19, p. 22.*

1066. A navy pension agent's voucher, having the prescribed acknowledgment of a justice of the peace thereon, is invalid if the certificate of the clerk of some court of record, under the seal of the court, be not given that the officiating magistrate was a justice of the peace at the time, and that his signature is genuine.—*Vol. 25, p. 72.*

NAVY YARDS.

1067. The regulations of January 20, 1844, designating the books authorized for the libraries of the navy yards and public vessels, prohibit any deviation from the tables, unless by express authority from the head of the department.—*Vol. 15, p. 165.*

1068. No person in the navy yard is to be called a clerk other than

those provided for by law. All others similarly employed are to be called writers, and the place of their employment specified on the roll.—*Vol. 10, p. 118.*

1069. An ordinary at a station is under the command of the commandant of the yard; but in no sense can it be considered as a part of the yard, nor can an officer attached to an ordinary be considered as doing duty in the yard.—*Vol. 10, p. 345.*

1070. No articles of furniture other than fixtures, in the legal acceptance of the term, can be purchased for houses allotted to officers of the navy at navy yards.—*Vol. 5, pp. 261, 504.*

1071. When the ordinary duties of the navy yard require that messengers shall be sent and compelled to cross toll-bridges and ferries, the commandant of the yard is authorized to approve accounts to cover the actual expenses that may be incurred, and the navy agent is authorized to pay the same.—*Vol. 5, p. 344.*

NOTARY PUBLIC.

1072. The seal and signature of a notary public are not sufficient of themselves to establish the official character of the notary, but the same shall be shown by other and proper evidence. Act of September 16, 1850, (9 Stat., 458.) The certificate of the clerk of the court need not accompany each jurat of the notary, if the proper evidence of the commencement and termination of his commission be placed on file.—*Vol. 25, pp. 594, 595; vol. 26, p. 159; vol. 16, p. 405.* PENSION, 1679.

1073. Neither is it necessary that the certificate of the Secretary of State or clerk of the court should accompany every jurat of a notary public in vouchers for the payment of pensions, provided the pension agent have filed in his office the official evidence of the character of the party acting as magistrate, and this fact should be noted on the voucher.—*Vol. 28, pp. 537, 538, 540, 541.*

1074. The seal of a notary must be impressed upon the voucher, as genuine seals have been cut from other papers and pasted on spurious vouchers. (See circular of Second Comptroller to navy agents, dated March 1, 1854.)—*Vol. 27, p. 190.*

1075. A notary public is subject to the same rule as other magistrates. All magistrates must obtain the necessary certificate from the clerk of some court of record.—*Vol. 4, p. 330.* PENSION, 1679.

OFFICE.

1076. Officers of the marine corps who are entitled to an office by the general regulations for the army, must furnish a voucher for the expense actually incurred for office hire, and the fuel allowed for it will in all cases be drawn in kind. Commutation for neither is allowed.—*Vol. 14, p. 226.*

1077. The officer commanding the guard at the gateway of the navy yard is not entitled to an office.—*Vol. 15, p. 43.*

ORDNANCE.

1078. The act of March 3, 1851, (9 Stat., 595,) embraces men enlisted for the ordnance department. They are therefore to contribute the twenty-five cents per month to the Military Asylum, in the same manner with enlisted men belonging to other corps of the army.—*Vol. 14, p. 362.*

NOTE.—On the ground that they are soldiers. See also affirmative decision of the Secretary of War, November 8, 1854.

1079. Stationery used in making returns to the ordnance department should be charged to the quartermasters' department.—*Vol. 23, p. 104.*

ORDNANCE SERGEANTS AND SERGEANTS OF ORD- NANCE.

1080. The ordnance sergeants under the act of April 5, 1832, (4 Stat., 504,) and sergeants of ordnance (master workmen) under the act of July 5, 1862, (12 Stat., 508,) are distinct from each other, and differ in duty, grade, and pay. The former receive \$5 each per month in addition to the pay and allowance of a sergeant in the line, making \$25 per month for pay alone. The latter, under the act of June 20, 1864, (13 Stat., 144,) are entitled each to \$34 per month for pay; but the act of February 8, 1815, (3 Stat., 204,) is still operative, and excludes them from any right to an allowance for clothing.—*Vol. 27, p. 201.*

1081. The act of June 20, 1864, (13 Stat., 144,) makes no change in the status of soldiers' detailed as stewards, under the provisions of paragraph 1325, Army Regulations.

A soldier, therefore, so detailed under paragraph 1325 of the Army Regulations, is entitled to the pay and allowance of a sergeant of ordnance when at a post of more than four companies; and at other posts, or with smaller bodies of troops, the pay and allowances of a sergeant of infantry, under the 12th section of the act of July 5, 1838, on which the regulation was founded, and which, not being inconsistent with the law of 1864, was not included in the repealing clause.—*Vol. 31, pp. 330, 331.*

1082. The laws and regulations in regard to "retained pay" do not apply to enlisted men of the ordnance department. (See sec. 16, acts of July 5, 1838, 5 Stat., 258; July 7, 1838, 5 Stat., 308; August 3, 1861, 12 Stat., 288, 10th sec.; also February 8, 1815, (3 Stat., 203;) January 18, 1846, (9 Stat., 18;) and July 5, 1862, (12 Stat., 508.)—*Vol. 29, p. 43.*

PAY.

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I.—OFFICERS' PAY.

a.—*General principles and cases.*

1083. In the case of new officers and those transferred from one corps to another, pay begins when the appointee is subject to duty, and performs service. General Orders No. 61, August 19, 1861; Opinions Attorneys General, (vol. 1, pp. 528, 547; vol. 2, pp. 228, 638; vol. 4, p. 123; vol. 5, p. 133.)—*Vol. 24, pp. 136–138; vol. 25, p. 595.*

1084. Officers discharged from the volunteer force and appointed in the regular army must first obtain certificates of non-indebtedness before they can obtain the amounts due them as volunteer officers.—*Vol. 30, p. 654.*

1085. Under the act of July 5, 1838, (5 Stat., 257, sec. 7,) the two assistant adjutant generals having the rank of major are entitled to cavalry pay, as are also the assistant quartermasters, and the medical department. And as cavalry pay is given by this act to the colonel of ordnance, the commissary general, whose pay is, under the act of April 14, 1818, (3 Stat., 426,) the same with that of the colonel of ordnance, becomes also entitled to cavalry pay.—*Vol. 6, p. 569.*

NOTE.—No longer in force.

1086. If an officer conveys away his pay, and afterwards revokes the authority given to receive it, the remedy of the assignee is against the officer. It is not incumbent upon the accounting officers to enforce private transactions of this character.—*Vol. 15, p. 133.*

1087. Volunteer line officers are not entitled to pay before the date of acceptance of companies by the governors of the States. Acts of July 24, 1861, (12 Stat., 274,) and August 6, 1861, (12 Stat., 326.)

NOTE.—This decision has special reference to the above acts, and not to previous legislation or orders of the War Department.—*Vol. 24, pp. 637, 638, 660.*

1088. The act of March 3, 1863, (12 Stat., 736, sec. 31,) prescribes that any officer absent with leave, except for sickness or wounds, shall, during the absence, receive half of the pay, &c., prescribed by law, and no more. Held, that no distinction can be made between short and long leaves of absence; that the phrase "any officer" includes all officers, whether volunteer, regular, or marine.—*Vol. 25, pp. 174, 175.*

NOTE.—The act of June 20, 1864, (13 Stat., 145, sec. 11,) modifies the foregoing; an officer may have, when allowed by his proper officer, leave of absence without deduction from his pay and allowances, provided the aggregate of such absence be not over thirty days in a year.

1089. An officer whose name is accidentally omitted from the muster-rolls filed in the Adjutant General's office, and of whom there is

no record on any roll, is not thereby precluded from drawing pay for the period he served, provided the proof that he actually served is satisfactory.—*Vol. 25, pp. 230, 231, 471, 531. Post, 1287a.*

1090. Where the record evidence of the roll of the company is that the governor of the State commissioned decedent first lieutenant, there being no vacancy at the time in the regiment, and decedent's name not appearing on the first muster and pay-roll, held, that payment of arrears of pay cannot be made.—*Vol. 25, pp. 39, 40.*

1091. The act of March 2, 1853, gave B. S. Roberts the full amount of his pay and subsistence as second lieutenant in the first regiment of dragoons from January 28, 1832, when he was coerced to resign, to May 27, 1846, when he was restored. Question of emoluments and allowances having been submitted to the Attorney General, this officer gave an opinion that Roberts was entitled to medicine and medical attendance, but not fuel and quarters.—*Vol. 16, pp. 110, 148–150.*

1092. When an officer is entitled to pay according to his lineal rank during one portion of the month, and according to his brevet rank during another portion, the computation of his pay shall be according to his lineal rank for the whole month, to which shall be added the difference between his lineal and brevet ranks for that portion of the month during which he was entitled to pay according to his brevet rank.—*Vol. 18, pp. 242, 243.*

1093. An officer mustered in the 28th of July, and mustered out August 20, although it is specified that service was rendered inclusive of both days, is not entitled to pay for both days. The day of discharge is excluded.

Promoted officers are paid in the lower grade up to the day the higher appointment takes effect, and thereafter including the day their promotion takes place in the higher grade.—*Vol. 25, p. 600.*

1094. General Order No. 126, 1862, forbade the employment of supernumerary second lieutenants, and directed their muster out from the date of receipt of this order. The act of March 3, 1863, abolished the grade. An officer of this class, although performing the duties of second lieutenant in the absence of the latter, is not entitled to the pay of that grade after the date of the law abolishing the grade.—*Vol. 28, p. 686.*

1095. An officer who relinquished his position as an officer of one regiment to accept promotion in another, and was actually transferred to and became a member of another organization, is only entitled to the pay of his new grade and from the date of his transfer.—*Vol. 28, pp. 520, 549.*

1096. An officer performing duty in a regiment in which there is no vacancy of the grade to which he was commissioned, is not entitled to pay as such.—*Vol. 29, p. 543.*

1097. An officer absent on sick leave is entitled to his pay and allowances unless that leave exceeds six months, in which case he forfeits allowances during the period of his leave exceeding that time.

The forfeiture of allowances after six months required by act of August 3, 1861, (12 Stat., 290, sec. 20,) is not changed by subsequent legislation. Nor is the provision extended by act of March 3, 1863, (12 Stat., 736, sec. 31,) to an officer absent on account of wounds or sickness, and exempting him from forfeiture of pay, &c., during six months, changed by the act of June 20, 1864, (13 Stat. 145, sec. 11.)—*Vol. 28, pp. 294, 295.*

1098. "Half pay and allowances," under section 31, act of March 3, 1863, (12 Stat., 736,) are held to include not only half of the pay proper and rations of the officer, but half of his entire pay and allowances, including servants' pay.—*Vol. 31, p. 67.* CONSTRUCTION OF STATUTES, 538.

b.—*Appointment and commission.*

1099. The pay of military officers commences from the date of their acceptance, they being from that date liable to duty.—*Vol. 11, p. 261; vol. 8, pp. 95, 248.*

1100. The date of the acceptance of an appointment is resorted to, in ordinary cases, to ascertain the time when the service actually commenced. But when the time is known by other facts, that of acceptance is immaterial.—*Vol. 28, p. 510; vol. 9, p. 311.*

1101. A staff appointment conferred on an officer in the line of the army is not a promotion, but an original appointment. Its pay will therefore commence from the date of the officer's acceptance.

Such acceptance may be either by letter or by commencing to perform duty.—*Vol. 15, p. 13.*

1102. See letter of Third Auditor to Second Comptroller, dated July 29, 1848, as to pay of staff, &c., when discharged in 1815 with three months extra pay.

1103. Performance of duty by an officer is regarded as sufficient evidence of his acceptance of the appointment to which the duty appertains.—*Vol. 8, p. 364.*

1104. When a question arises, whether an officer of the army did or did not hold a staff appointment during a particular period, the accounting officers must always be governed by the records of the department to which the appointment belongs. If those records are erroneous, it is the duty of that department to correct them.—*Vol. 14, p. 1.*

1105. Written acceptance of commission fixes the time of commencement of pay; yet when service has actually been performed under a regular appointment and appropriate to the actual rank conferred by the commission, it is admitted as evidence of acceptance.—*Vol. 24, p. 290; vol. 25, pp. 456, 457.* Post, 1175.

1106. Pay and rations are to be allowed an army officer from acceptance of appointment until dropped, although he may not perform duty in consequence of sickness. Opinions Attorneys General, April 16, 1834, vol. 2, p. 638; Secretary of War, June 13, 1842.—*Vol. 16, p. 544.*

1107. Actual performance of duties *under a commission* is virtual acceptance. An officer appointed brigadier general, and not commissioned as such, is not entitled to pay from date of appointment, though at the time having the command of a brigade.—*Vol. 25, pp. 456, 457.*

1108. In the case of one who led a regiment to battle, and met death as a military officer, the question of the validity of his appointment may be waived. Having fallen in the employment of the military branch of the government, a *quantum meruit* should be awarded, whether his appointment in that branch be recognized as legitimate or not.—*Vol. 26, p. 245.*

1109. The pay of an army officer commences with acceptance of the appointment, but a contingent appointment, "if there be a vacancy," does not carry pay unless it be consummated.—*Vol. 17, pp. 173, 178-179; vol. 18, p. 362; vol. 16, pp. 309-319.*

1110. The absence or delay of commission does not bar pay when companies with officers are mustered into service by the proper United States officer. Decision War Department.—*Vol. 24, p. 502.*

1111. An officer promoted from the ranks, and actually serving under a duly accepted commission from competent authority, is entitled to his pay as an officer from date of acceptance and commencement of service.—*Vol. 25, p. 580.*

1112. An officer claims the difference of pay between that of sergeant and first and second lieutenants on the ground that he was, by order of the War Department, mustered in as of a date prior to the date of his commission, and covering time when he was in fact only sergeant. Held that his claim is not valid.—*Vol. 25, pp. 595-610.*

1113. Non-commissioned officers are entitled to pay from the same date as commissioned officers, and not from any date anterior to their appointment by the captain and colonel. A non-commissioned officer will receive the pay of a private from date of enlistment until his appointment by the captain at the company organization, or the colonel at the regimental organization.—*Vol. 25, p. 152.*

1114. To entitle an officer to pay under a commission it must be shown that he accepted it either by letter or actual discharge of duty.—*Vol. 28, p. 605.*

1115. Where an officer performing the duties of his grade is prevented from accepting his commission in consequence of being absent on a raid in the enemy's country, he is entitled to pay from the date of his commission.—*Vol. 28, p. 522.*

1116. Where an officer was captured before his commission was issued, there is no presumption of acceptance arising from a performance of duty, and he is not entitled to pay.—*Vol. 28, p. 701.*

1117. Performance of duty by an officer on and after a certain date is regarded a virtual acceptance of his commission.—*Vol. 28, p. 626.*

1118. An officer holding the rank of captain while detained a prisoner of war was promoted to be major; he was not mustered as such,

and never having been in the command and performing the duties of the grade given by the commission, he is entitled only to the pay of captain.—*Vol. 28, p. 669.*

1119. But an officer commissioned and acting in the grade given by his commission at the time of his capture, although his commission had not reached him, is considered as having accepted it, and entitled to the pay of his new rank.—*Vol. 28, p. 670.*

1120. One cannot be paid as a commissioned officer, who has never performed duty as such, and at no time been in a condition to be mustered in as an officer, even though he be in the receipt of his commission.—*Vol. 28, p. 724.*

1121. The legal right of an officer to pay under a conditional commission accrues only on his muster-in after fulfilment of all the conditions of that commission.—*Vol. 28, p. 723.*

1122. An officer is not regarded as entitled to be paid as such until recognized by the War Department as an officer, or acting as such under a commission from the governor of a State and afterwards mustered into the United States service for the period pay is claimed.—*Vol. 28, p. 389.*

1123. Election by the members of the company, or appointment by the commander of a regiment, does not authorize pay.—*Vol. 28, p. 389.*

1124. A captain commissioned and performing duty with his regiment was elected by the officers of a regiment whose organization was incomplete, its lieutenant colonel. The regiment subsequently was consolidated with another. By such consolidation he claims to have been rendered supernumerary. It was held that he is not entitled to the pay of lieutenant colonel from the date of election to date of consolidation, because he never received an appointment from any competent authority, neither the governor of his State nor the Secretary of War having commissioned him, and his election by the officers of the regiment amounts to nothing in the absence of a commission. General Orders No. 61, 1861, requires the completion of four companies before the muster in of an officer of this grade.—*Vol. 28, p. 296.*

c.—Sentence of court-martial; arrest by civil authorities.

1125. Officers of the army, when suspended, under sentence, from duty merely, are entitled to their pay and rations.—*Vol. 6, p. 31.*

1126. An officer dismissed by sentence of court-martial will be paid to the date when the order approving the sentence was received at the post where the officer was, if no other time be specified in the sentence, or in the order promulgating it, as the termination of his service and pay.—*Vol. 26, p. 29.*

1127. An officer under arrest upon criminal charge by civil authority, afterwards tried and acquitted, or otherwise legally dis-

charged, is entitled to his pay, &c., during that period.—*Vol. 22, pp. 262, 263.*

1128. *Seem* that an officer who is dismissed by sentence of court-martial shall be paid only to the date of his arrest and consequent withdrawal from duty, provided no other date be specified in the sentence or order promulgating it; but the practice has been different.—*Vol. 28, p. 688.*

1129. An officer convicted of crime by the civil tribunals, imprisoned, and consequently mustered out of the service through his own fault, is not legally entitled to arrears of pay, though the uniform practice has been to make payment in such a case to the date of withdrawal from service.—*Vol. 27, pp. 135, 136.*

1130. An officer, while on duty with his company, was set upon, in the streets of Baltimore, by a party of drunken rebels, and, in the melee, he fired upon them, killing one. He was arrested and imprisoned by the civil authorities, tried and convicted of manslaughter. The claim for pay during the time thus withdrawn from the service was held to depend upon the question whether or not the officer was properly to be considered in the military service. This point having been decided affirmatively by the Judge Advocate General of the army, payment was allowed by the accounting officers.—*Vol. 28, p. 745. EVIDENCE, 813.*

d.—*Termination of service ; dismissal.*

1131. No pay can be allowed after an officer shall have ceased to continue in service.—*Vol. 13, p. 201.*

1132. It has become a uniform rule, that when an officer of the army or navy is out of service, and is restored by reappointment, he cannot receive pay for the interval, except by act of Congress.—*Vol. 15, p. 394.*

1133. By an order of the War Department, dated September 23, 1841, no pay or emoluments can be allowed to officers who may thereafter be restored to rank for the time they may have been out of service.—*Vol. 14, p. 137 ; vol. 13, p. 354.*

1134. An officer on leave, when he is dropped or dismissed from the military service, will be paid to the date inclusive of the order dropping or dismissing him, provided no other time be specified in the order as the date when he ceased to be an officer, and, in such case, to the date so specified.—*Vol. 26, p. 28.*

1135. An officer on duty, or in hospital, when he is dropped or dismissed from the military service, will be paid to the date at which the order dropping or dismissing him was received at his post or hospital, if no other time be specified in the order as the date when he ceased to be an officer ; and, in such case, to the date so specified. See act of July 13, 1866, (14 Stat., 92, sec. 5.)—*Vol. 26, p. 28.*

1136. An officer dismissed from service to take effect on a certain day is entitled to pay to that date only, and not to the time he is

notified. See act of July 22, 1861, sec. 10, (12 Stat., 270,) relative to action of board of examiners.—*Vol. 24, p. 642.*

1137. An officer dropped from the rolls of the army and subsequently restored and reinstated to his former rank, is not entitled to pay for the intervening time from the date when dropped to the date when restored.—*Vol. 29, p. 327.*

1138. An officer dismissed the service, and afterwards re-instated, is not entitled to pay for the intervening period.—*Vol. 30, p. 55.*

e.—Resignation and discharge.

1139. Officers who have resigned, or otherwise left the army, must take and subscribe the oath as required by the General Regulations of the Army, p. 352, before they can receive the arrearages of pay, &c., due to them.—*Vol. 10, p. 439; vol. 11, p. 265.*

1140. No part of the arrears due an officer who has resigned will be paid him, except upon a full and final settlement of the whole.—*Vol. 15, pp. 208, 209.*

1141. An officer on leave, who resigns, will be paid to the date given in the acceptance of his resignation.—*Vol. 26, p. 28.*

1142. An officer on duty, who resigns, will be paid to the date at which he received notice of the acceptance of his resignation, provided he continued on duty till that time; otherwise, to the date when he was relieved from duty.—*Ibid.*

1143. Officers resigning under General Orders 79, 1865, come under the rules of General Orders 103, 1864, and if on leave are only entitled to pay to date given in acceptance of resignation. If they do not resign they are entitled to pay till muster out. Officers mustered out under General Orders 82, 1865, being on leave, or performing no service, are to be paid to the date named in the order.—*Vol. 28, p. 30.*

1144. Officers discharged to take effect from a particular anterior date, who do not receive notice of their discharge until some time afterwards, and who in the mean time continue on duty, are entitled to pay to the date when notice of discharge was received.—*Vol. 28, p. 482.*

1145. Officers tendering their resignations and continuing on duty are entitled to pay until properly notified of the acceptance of their resignations.—*Vol. 25, pp. 149, 150.*

1146. An officer on detached service at the time his regiment was discharged, and actually performing duty as an officer of said regiment until he received notice of his discharge, is entitled to pay up to the date of such notice.—*Vol. 28, pp. 520, 549.*

f.—Pay proper and extra allowances.

1147. Where an act of Congress grants to the heirs of a soldier "thirty-five years' half-pay as captain," in consideration of the mili-

tary services of the ancestor, half-pay is considered as referring to the pay proper, and not to the emoluments or allowances.—*Vol. 15, p. 366.*

1148. "Pay proper," within the meaning of the 1st section of the act of March 2, 1867, (14 Stat., 422,) means the pay pertaining to grade, and does not include increase of compensation depending on particular duty. Line officers acting as aides-de-camp, company officers commanding companies, &c., as they already receive more than others of their grade, are not entitled to an increase of one-third upon the addition they receive for special services. Regimental adjutants, commissaries and quartermasters being made grades by law of July 28, 1866, (14 Stat., 332,) are entitled to the one-third increase on what was previously additional pay.—*Vol. 30, pp. 176, 177. RATIONS, 1841.*

1149. An officer of the army engaged in the Mexican boundary survey, and paid at the rate of \$3,000 per annum salary, is not entitled to any allowances for transportation, and fuel and quarters, during the time for which he is so paid.—*Vol. 8, p. 362.*

1150. An officer of the army on duty, and entitled to his pay and emoluments according to his rank, is not entitled to pay, at the same time, as an officer of militia — *Vol. 6, p. 461.*

1151. Under the laws of March 3, 1835, (4 Stat., 757,) and March 3, 1839, (5 Stat., 349, sec. 3,) allowances cannot be made for the detention of an officer, or any other person in the service of the United States, whose salary or whose pay and emoluments are fixed by law, when ordered on special service; nor can any allowance be made for their expenses while on such service.—*Vol. 9, p. 508.*

1152. Under an opinion of the Attorney General, given in 1842, charges for detention have ever since been disallowed. The prohibitory law applies not only to officers, but also to any other person whose salary or whose pay or emoluments is fixed by law and regulations.—*Vol. 10, p. 320.*

1153. In settling the compensation of the mixed, civil, and military commission appointed under act of March 3, 1853, (10 Stat., 217,) to examine into the management of armories, the President having allowed eight dollars per day, less the amount of their "pay," the pay and allowances paid through the pay department were deducted from the compensation of the military members, but not the contingent allowances in the quartermaster's department.—*Vol. 17, pp. 251-255.*

g.—Prisoner of war.

1154. An officer reaching a loyal State, (or place,) having been a prisoner of war on duty, and by the action of the War Department retained in service, on duty, is entitled to pay up to the date he receives notice of his exchange and order for muster-out.—*Vol. 25, pp. 499-500, 556, 557, 749.*

1155. Where one was commissioned lieutenant by the governor of

a State, but was not mustered because of his capture by the enemy, held that if the record on the company roll shows that the lieutenant was properly in active service under his commission, he may be paid from the date of his acceptance thereof to date of return from captivity to a loyal State, and if on duty with his regiment afterwards, to date of discharge.—*Vol. 28, p. 281.*

1156. The War Department has power to dismiss an officer while in captivity; but under the law of March 30, 1814, (3 Stat., 115, sec. 14,) his pay, &c., during his captivity is to be allowed him, notwithstanding the expiration of his term of service.—*Vol. 26, p. 29.*

1157. When an officer, a prisoner of war, is reduced to pay of a lower rank by the consolidation of his regiment, held that he is entitled to his higher rank while a prisoner. See also act of March 30, 1814, (3 Stat., 115)—*Vol. 27, p. 128.*

1158. An officer, while prisoner, who is dismissed from the army by the Secretary of War is entitled, under the act of March 30, 1814, (3 Stat., 115, sec. 14,) to "pay, subsistence, and allowance" during his captivity. The Secretary could not absolve the government from its obligations to pay the prisoners in the hands of the rebels, by declaring that they were discharged from the service of the United States.—*Vol. 27, p. 128.*

1159. An officer while detained a prisoner of war by the enemy is not entitled to receive the additional allowances not pertaining always to his grade, but depending upon certain contingencies of service or duty.—*Vol. 28, p. 331.*

1160. An aide-de-camp whose position as such depends on the will of the general appointing him, is entitled while a prisoner of war to the pay of his lineal rank only.—*Vol. 28, p. 331.*

1161. But a sergeant or other non-commissioned officer, whose place in his company is at once filled upon his captivity, does not lose his right while a prisoner to his pay as such non-commissioned officer.—*Vol. 28, p. 331; vide acts of March 30, 1814, (3 Stat., 113, sec. 14,) and March 2, 1827, (4 Stat., 227) PRISONER OF WAR, 1724.*

1162. *Seem*, that an officer who is a prisoner of war is not entitled to commutation of rations, &c., servants, and forage for horses. Acts of April 23, 1800, (2 Stat., 52;) March 30, 1814, (3 Stat., 115, sec. 14;) May 13, 1846, (9 Stat., 10, sec. 9;) July 17, 1862, (12 Stat., 594, sec. 1.) Opinions Attorneys General, vol. 1, pp. 528, 547; vol. 2, pp. 228, 638. The commutation of these items, excepting forage, is allowed since July 17, 1862, (12 Stat., 594,) under an opinion of Judge Advocate Holt, and an order of the War Department.—*Vol. 24, pp. 342-344.*

1163. The limitation of the act of March 3, 1863, (12 Stat., 736, sec. 31,) is held not to apply to paroled prisoners of war absent with leave, until they shall have been regularly exchanged.

NOTE.—The above act provides that an officer absent from duty with leave, except for sickness or wounds, shall, during his absence, receive half of the pay, &c.—*Vol. 28, p. 606.*

1164. An officer having been captured by the enemy while in the actual discharge of the duties of captain and who was commissioned as such, but had not then received his commission in consequence of his absence on duty, claimed the pay of that grade, because he was thus captured in the line of duty, and while performing the duties of the grade to which he was promoted and afterwards mustered. It was allowed on the ground that he should not be placed in a worse position, by his strict performance of duty, and consequent captivity and suffering, than an officer who is doing nothing, and therefore ready to receive his commission and be mustered in at once.—*Vol. 28, p. 659.*

h.—*Enrolment and muster.*

1165. An officer enrolled in Philadelphia claimed four and one-half days' pay and subsistence while travelling to New York, where he was mustered. Held, that he was not entitled to the same. Army Regulations, par. 1115 and 1353, ed. 1861. Act of July 22, 1861, (12 Stat., 269, sec. 5).—*Vol. 24, pp. 47, 48.*

1166. Under General Orders No. 61, dated August 19, 1861, and No. 66, August 26, 1861, a captain and second lieutenant improperly mustered into service before a sufficient number of men is enrolled to organize their companies, are not entitled to pay from the date of muster to the date when the minimum number of men for a company is enrolled.—*Vol. 25, pp. 284, 285.*

1167. When a field officer accepts his commission and is ordered to join his regiment which is not yet organized, he is not entitled to pay until he is mustered; and his regiment must first be mustered.—*Vol. 24, pp. 136–138.*

1168. Officers of unorganized companies not mustered into the United States service, nor accepted by the governor of the State, cannot be paid under existing law.—*Vol. 25, p. 272.*

1169. A commissioned company officer is not entitled to pay until the company to which he belongs shall have enrolled the minimum number required by law. But when, as private, he is enrolled and sworn in by a mustering officer, he is entitled to pay from enrolment. The record of the roll, "pay due from enrolment," and "officer paid as private, from enrolment to muster," carries no weight with it, unless based upon final decisions of the accounting officers. General Orders, War Department, Nos. 66, 61, 1861; acts of July 24, 1861, (12 Stat., 274,) and August 6, 1861, (12 Stat., 326.)—*Vol. 25, pp. 69, 70, 215, 216.*

NOTE.—Under General Orders, War Department, No. 48, February 25, 1863, a first lieutenant must first be mustered as a condition precedent to payment.

1170. An officer claimed pay from the date of his enrolment to muster-in, and it was held that payment might be made if shown by satisfactory evidence that the officer was in the actual discharge of

the duties of adjutant, under a commission from the governor of a State as such, with an organized regiment of not less than a minimum organization.—*Vol. 28, pp. 698, 699.*

1171. Officers who entered the service prior to February 25, 1863, are entitled to pay from date of actual performance of duty with an organized command under a commission, or from date of muster into service by competent authority. (See General Order February 25, 1863.)—*Vol. 30, pp. 671, 672.*

See General Orders numbers 61 and 62, 1861; act of July 24, 1861, (12 Stat., 274;) Provost Marshal's Manual, par. 440; letter of Adjutant General, November 21, 1862.—*Vol. 30, p. 569.*

1172. Officers who entered the service prior to February 25, 1863, are entitled to pay from date of actual entry upon duty, under a commission from the governor of the State, with an organized command.

1173. Officers and men are only entitled to pay to the date of muster out of service, even should the payment not be made at that date, except when from extraordinary causes, not the fault of the troops, the payment has been unreasonably delayed after reaching rendezvous.—*Vol. 30, pp. 573, 574.*

1174. An officer holding an appointment from the governor of his State claimed the pay of first lieutenant while recruiting for the regiment he subsequently joined; but it was held that, not being mustered for his pay on the roll of his company, and the provisions of the general order under which he claimed the pay not being observed by the State authorities in organizing his regiment, he is not entitled to pay in any grade prior to the date of his muster into the service as first lieutenant.—*Vol. 28, p. 471.*

1175. Under the present regulations of the War Department, officers are not entitled to muster-in, as such, until they receive and present their commissions.—*Vol. 30, p. 35.*

II.—ALLOWANCE TO COMMANDERS OF COMPANIES.

1176. A lieutenant in command of a company is not entitled by law or regulation to any additional pay or compensation, except the ten dollars per month allowed for the responsibility of arms, &c., under the law of March 2, 1827, (4 Stat., 227,) which gives the \$10 additional only to company officers.—*Vol. 12, p. 330.*

NOTE.—See act of June 15, 1864, (13 Stat., 127,) allowing it to such officers only in actual command.

1177. The law of March 2, 1827, (4 Stat., 227,) gives the additional pay of ten dollars per month to the officer in the actual command of a company, as compensation for his responsibility in respect to the clothing, &c., of the company. A constructive command is excluded by the terms of the act.—*Vol. 11, p. 308.*

1178. The ten dollars per month provided for by the act of March 2, 1827, (4 Stat., 227,) is payable to the officer having the actual command of the company; and where doubt exists as to who had the

command, inquiry is made of the Adjutant General, whose answer on the point is conclusive.—*Vol* 13, p. 69; *vol* 28, p. 390.

1179. Under the act of March 2, 1827, (4 Stat., 227,) to entitle an officer to the \$10 additional, he must be in the *actual* command of a company in the army, and responsible for the clothing, arms, &c., of the company. B. held the actual command of the company, and by proper authority turned over the property to another officer. Held that neither is entitled to the additional pay.—*Vol.* 28, *pp.* 339, 340.

1180. The act of March 2, 1827, (4 Stat., 227,) does not authorize the payment of more than ten dollars per month to the commander of a company, however large the number of men, or however they may be organized, whether as two companies of usual number, or of any number of men in one organization.—*Vol.* 28, p. 417.

1181. The ten dollars per month allowed to commanders of companies is solely for responsibility for property.

Temporary absence, therefore, by such an officer, without turning over the public property, or being relieved of his responsibility for it, should not deprive him of this allowance.

By temporary absence, is understood an absence not exceeding one month.—*Vol.* 15, p. 262.

1182. Except in case of organized companies, no pay is allowed for the responsibility for arms and clothing when the number of men is less than that of a full company.—*Vol.* 13, p. 312.

1183. Though an officer may have command of the larger portion of a company for a limited period, yet he is not entitled to additional pay for responsibility of arms, &c., if the company was not turned over to him so as to involve that responsibility.—*Vol.* 20, p. 24.

1184. A captain of a company entitled to ten dollars per month for care and responsibility of arms, on detached service for a period of more than thirty days, and having a command of one hundred or more, and having receipted for arms, &c., is entitled to the ten dollars extra for responsibility of arms, but not for the extra compensation in both commands at the same time.—*Vol.* 25, *pp.* 440, 449, 710, 711.

NOTE.—Officers in command of recruiting detachments are also entitled.

1185. A captain or lieutenant in command of a company loses by captivity the additional allowance of \$10 per month for care and responsibility of arms, &c., as it does not necessarily belong to his grade, but is given only to the officer in actual command of a company.—*Vol.* 28, p. 331.

III.—BREVET PAY.

1186. *Officers of the army holding brevet commissions are entitled to

* The acts of March 3, 1863, and March 3, 1865, forbid additional pay on account of brevet rank and command.

receive the pay and emoluments of their brevet rank when on duty and having a command according to such brevet rank, and at no other time.—*Vol. 14, pp. 187, 276; vol. 16, pp. 137, 159–163, 222–224, 306, 449, 450; vol. 17, pp. 237, 245; vol. 20, p. 410.*

1187. To authorize the allowance of brevet pay, the officer must not only have a proper command, but must be on duty. He cannot, therefore, receive it when on leave of absence, though leaving and returning to a command appropriate to his brevet rank.—*Vol. 15, pp. 262, 263.*

1188. Brevet officers are not entitled to pay according to their brevet rank while serving on a court-martial.—*Vol. 8, p. 464.*

1189. A brevet colonel commanding an unorganized body of recruits, equal in number to a regiment, is entitled to the pay of his brevet rank.

Organization generally determines to what grade a command belongs; but where no organization exists, its number must determine its character.—*Vol. 15, pp. 193, 194.*

1190. A captain and brevet major was assigned to duty as acting field officer of a regiment. Subsequent to the exercise of this command, he received a brevet as lieutenant colonel, to take effect from a date anterior to it. Held that he was entitled to the brevet pay of major only, and not of lieutenant colonel.—*Vol. 15, p. 197.*

1191. The command of an acting field officer is not necessarily other than that of a major. And as the brevet of lieutenant colonel was not conferred till afterwards, it cannot be regarded as the intention of the order to assign him to a command as such, especially as the regiment in this instance consisted of only six companies.—*Vol. 15, p. 197.*

1192. A captain and brevet major, assigned by general order to command a battalion of volunteers consisting of six companies, is entitled to brevet pay as major, but not to the pay of lieutenant colonel. To entitle an officer of the army to the pay of a higher grade in the militia, he must be actually appointed to that grade and not merely assigned to its command. Pay follows the commission held, not the duty performed.—*Vol. 15, p. 196.*

1193. A captain and brevet major of artillery, in command of two companies of light artillery, is entitled to brevet pay as major of artillery only, and not as major of cavalry. The act of March 3, 1847, (9 Stat., 186, sec. 19,) allows cavalry pay to the company officers only of light artillery, and not to field officers commanding those companies.—*Vol. 15, p. 465.*

1194. A brevet officer of the ordnance corps, in command of an arsenal, is not considered as being "on duty, and having a command according to his rank," unless he is expressly recognized by the War Department as having such command.—*Vol. 13, p. 211.*

1195. The duty of inspector general of the army is not a command, and cannot therefore authorize the allowance of brevet pay.—*Vol. 14, p. 187; vol. 15, p. 283.*

1195a. The performance of duty as assistant adjutant general by a brevet lieutenant colonel is not a command according to his brevet rank, and does not entitle him to brevet pay.—*Vol. 14, p. 405.*

NOTE.—See opinion of Attorney General Taney, August 5, 1831.

1196. A brevet brigadier general, in command of a military department, is not thereby entitled to receive brevet pay, unless the force under his command is equal to a brigade.—*Vol. 14, p. 304.*

1197. The pay of lieutenant colonel in the line of the army can be received under a brevet commission, in three instances only: First, when the officer is on duty, and acting as colonel or lieutenant colonel of a regiment. Second, when he is on duty, and commanding not less than four organized companies. Third, when he is on duty and commanding an unorganized force not less in number than the aggregate of four companies, according to the legal organization of the corps to which he or they belong; or a number of organized companies, less than four, and a sufficient unorganized force to make up the difference.—*Vol. 15, p. 438.*

1198. The fact that an arsenal is, by law, of a grade appropriate to the command of a captain, is not sufficient to conclude the question, "did the officer exercise a captain's command?"—*Vol. 16, p. 459.*

1199. An organized body of troops, equal to the command of a captain, carries brevet pay of captain to the commander with the brevet. See letter of Secretary of War to Second Comptroller, May 13, 1854.—*Vol. 17, p. 190.*

1200. When the commanding officer of a post is absent therefrom less than a month and then resumes his command, the officer actually commanding during such temporary absence is not entitled to brevet pay and double rations, whether the officer temporarily absent claims his allowances as commanding or not.—*Vol. 17, p. 563.*

1201. The act of March 3, 1863, (12 Stat., 758,) authorizes the President to confer brevet rank upon commissioned officers; but the brevet does not carry increase of pay or emoluments. See, also, on the subject of brevet pay, acts of July 6, 1812, (2 Stat., 785, sec. 4;) June 3, 1834, (4 Stat., 713, sec. 5;) March 3, 1839, (5 Stat., 352,) March 3, 1865.—*Vol. 27, p. 379; vol. 28, p. 777.*

1202. The "temporary absence" of an officer in command of a post for a period of less than one month does not operate as a forfeiture of the allowances to which he is entitled by reason of his command.—*Vol. 18, p. 212.*

1203. A major general is entitled to two aids, who are entitled to twenty-four dollars per month with rations; a brigadier general to only one aid, at twenty dollars per month and less one ration. If he holds the rank of major general by brevet, he is entitled to all the pay and emoluments of brevet rank so long as he has a major general's command on duty. The aid, therefore, of Brigadier General, Twiggs is not entitled to receive the pay and emoluments of a major general's aid, and the same having been allowed and paid him, the

excess must be charged to him. See acts of July 29, 1861, (12 Stat., 280, sec. 3;) August 5, 1861, (12 Stat., 314,) and July 17, 1862, (Stat., 599, sec. 10,) for new provisions on this subject.—*Vol. 21, pp. 179, 299, 379, 380, 427.*

NOTE.—The act of July 29, 1861, gives a major general three aides; to a brigadier, two.

1204. The act of April 16, 1818, (3 Stat., 427,) regulating the pay and emoluments of brevet officers, operates as a virtual repeal of such portions of the act of July 6, 1812, (2 Stat., 785, sec. 4,) as refer to this subject.—*Vol. 18, p. 385.*

1205. When one was appointed, not promoted, to be assistant adjutant general with the brevet rank of captain, held that the appointment was not operative in respect of pay like promotion; that the rank was an adjunct of the appointment, which takes effect from the date of acceptance, and cannot, like a promotion, have retroactive operation.—*Vol. 19, pp. 247, 248.*

IV.—EXTRA PAY OF OFFICERS.

a.—*Generally.*

1206. B, entered on the rolls as a private soldier, claimed additional pay as captain and assistant quartermaster, was paid the three months' extra pay as captain at the time of discharge. He produces the official evidence of his appointment and the certificate of the United States mustering officer of his discharge. The rolls having been corrected by the War Department, the pay and emoluments of his grade were allowed to B.—*Vol. 22, pp. 565, 566.*

1207. An officer cannot be allowed extra pay for more than one service at the same time.—*Vol. 2, p. 335.*

1208. There is no law authorizing a lieutenant, while in command of a company, to claim the pay of a captain.—*Vol. 8, p. 483.*

1209. An officer of the army, while employed in the removal of Indians, is entitled to his actual expenses beyond what he would have been subjected to while stationary. And of these expenses he will be required to produce an account.—*Vol. 9, p. 39.*

1210. Under the act of September 28, 1850, (9 Stat., 504,) granting extra pay to the commissioned officers and enlisted men serving in Oregon and California, officers are not entitled to the additional pay allowed to private soldiers for their servants.—*Vol. 14, pp. 211, 212.*

1211. Additional pay to army officers on leave in California and Oregon may be allowed, if the leave was not more than three months, provided they rejoined their command for duty. If they did not rejoin, no additional pay can be allowed for time of leave.—*Vol. 16, pp. 530, 531.*

1212. Extra allowances can only be admitted for the time of actual service for which they were authorized.—*Vol. 16, pp. 479, 480.*

1213. An officer is not entitled to pay for services in addition to regular pay and allowances.—*Vol. 16, p. 569.*

1214. Officers and men of the light artillery, when serving as such, and mounted, are entitled to the pay, &c., of that grade, (dragoons,) and at no other time and under no other circumstances.—*Vol. 17, p. 350; vol. 18, pp. 337, 338; vol. 19, p. 87; vol. 20, pp. 549, 550; vol. 21, p. 488.*

1215. During the time an engineer officer, charged with the construction of a fort, is at the fort, he must be regarded as part of the garrison. (Claim for extra pay at Fort Laramie.) See decision of Secretary of War in Woodbury's case, May 3, 1855.—*Vol. 27, p. 191.*

1216. Officers of the army, while *en route* to Oregon, California, or New Mexico, are not entitled to the extra pay given by the acts of September 28, 1850, (9 Stat., 504,) and August 31, 1852, (10 Stat., 108.) It can only be allowed for the period during which they are actually serving in those places.—*Vol. 15, p. 472.*

1217. A lieutenant acting as adjutant of a regiment of engineers is not entitled to extra pay, since company lieutenants only were provided for by law, (see act of July 17, 1862, sec. 20, 12 Stat., 597,) or intended by Order 177, 1862, organizing a regiment of engineers.—*Vol. 28, p. 50. Post, 1233.*

b.—*Volunteers; under act of March 3, 1867.*

1218. Officers of the army, serving in volunteer corps under commissions from State authority, are not entitled to the extra pay allowed by the act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol. 14, p. 113.*

1219. A volunteer officer is required to close his accounts with the treasury before the three months' extra pay can be paid to him.—*Vol. 16, p. 124.*

1220. Only those who were officers of the army—regulars or volunteers—at the date of the passage of the act of March 2, 1867, (14 Stat., 422,) are entitled to the increase of pay provided by that act.—*Vol. 30, p. 177.*

1221. Officers continuously in service as volunteers and regulars from July 1, 1866, to the passage of the law of March 2, 1867, (14 Stat., 422,) giving them one-third increase of their pay proper, are entitled to that increase on their pay as volunteers and as regulars.—*Vol. 30, p. 674.*

1222. Officers of the regular army, serving in the volunteer force, are not entitled to the three months' extra pay proper, provided by the 4th section of the act of March 3, 1865, (13 Stat., 497.)—*Vol. 31, pp. 100, 102.*

1223. Volunteer officers mustered out after the 9th of April, 1865, who have an appointment in the regular army, to take effect on their muster out, are also entitled to the three months' extra pay. (See order of the Secretary of War of July 16, 1866.)—*Vol. 31, pp. 100, 102.*

1224. An officer was discharged after the close of the war; his discharge was made dishonorable in consequence of having appropriated for private use public property. Held that as he was discharged dishonorably it could not be regarded as for "close of the war," and that Congress intended this gratuity for honorable service.—*Vol.* 29, *p.* 41.

c.—Resignation and sentence of court-martial.

1225. Officers voluntarily leaving the service by resignation are not entitled to the three months' extra pay under the act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol.* 14, *pp.* 449, 450.

1226. An officer who resigns under charges is not entitled to the three months' extra pay authorized by act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol.* 19, *p.* 218.

1227. To entitle an officer who resigned his commission on account of ill health, before his term of service expired, to the three months' extra pay, under the act of July 19, 1848, (9 Stat., 248, sec. 5,) it must appear that the ill health amounted to disability, was contracted in the service, and was assigned at the time as the cause of resignation.—*Vol.* 15, *pp.* 60, 61.

1228. An officer suspended from his command and pay by the judgment of a court-martial, is not entitled to the increased pay of twenty dollars per month, under the act of February 21, 1857, (11 Stat., *p.* 163.)—*Vol.* 21, *p.* 242.

1229. When the record shows that an officer resigned before the termination of the war with Mexico, without showing the reasons, the accounting officers cannot receive other evidence that his resignation was caused by "ill health incurred while in the service," and he is not entitled to the extra pay per act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol.* 22, *pp.* 101, 102.

1230. Where a regiment was raised to serve during the war with Mexico, and at the close of the war was ordered to be marched home and then mustered out of the service, an officer belonging to it, who resigned his commission after hostilities had terminated, but before the regiment had reached home, is not entitled to the three months extra pay.—*Vol.* 15, *p.* 61.

d.—Staff duty, commission, and muster.

1231. An officer of the army doing the duty of regimental quartermaster was promoted to the captaincy from a prior date, which included a month of his service as quartermaster. Held that he is entitled to the pay of his new and lincal grade from the date of his rank, but he is not at the same time entitled to staff allowances as a subaltern of the line by act of February 11, 1847, (9 Stat., 124, sec. 4.)—*Vol.* 20, *p.* 181. ASSISTANT COMMISSARY, 104, 100, 101.

1232. Officers performing staff duty, in addition to their duty in

the line, have been considered entitled to have included in the three months' extra pay provided for by the act of March 3, 1815, (3 Stat., 224,) the compensation of their staff rank. The same principle has been decided to be applicable in settling the accounts of officers discharged at the close of the Mexican war.—*Vol. 13, p. 123.*

1233. When one was appointed adjutant by proper authority, and performed the duties of the office, he is entitled, both by law and regulations, to the ten dollars per month in addition to his pay as lieutenant. But, under the act of March 2, 1827, (4 Stat., 227,) he is entitled to only three rations a day for the time he receives the additional pay for staff duty.—*Vol. 25, pp. 676, 677. Ante, 1217.*

1234. Officers of the line of the army, entitled to three months' extra pay, who at the time of their discharge were receiving additional pay for performing staff duty, are entitled to have such compensations included in computing the extra pay.—*Vol. 13, p. 272.*

1235. The adjutant of the regiment does not lose his right to the additional twenty dollars per month for staff duty by being on temporary detached service. Acts of March 5, 1792, (1 Stat., 242, sec. 7;) March 16, 1802, (2 Stat., 133, sec. 4;) and March 2, 1821, (3 Stat., 615)—*Vol. 26, p. 50.*

1236. To entitle an officer to the extra pay, under the 4th section of the act of March 3, 1865, (13 Stat., 497,) it is an essential condition that he shall have been actually in commission on that day, and have served till the close of the war; which for this purpose Congress subsequently fixed as April 9, 1865.—*Vol. 28, pp. 579, 580.*

1237. Under the ruling of the War Department an officer is not considered properly in commission until mustered in as such. Held that an officer commissioned on the 1st of March, 1865, but not mustered until after the 3d, to rank from February 25, is not entitled to the extra pay granted by the act of March 3, 1865, (13 Stat., 497.)—*Vol. 28, pp. 693, 700.*

1238. *Seem* that the question whether or not an officer was in the service, on duty, and in commission on the 3d of March, being a military one, the decision of the Secretary of War must be had in a disputed case before the claim for such pay can be entertained by the accounting officers.—*Vol. 28, p. 193.*

NOTE —Modified by the act of July 13, 1866.

1239. An officer commissioned prior to March 3, 1865, but mustered subsequent to that date, and discharged because of the close of the war, is not entitled to the three months' extra pay allowed by the law of that date.—*Vol. 28, pp. 164, 355, 453.*

1240. Officers conditionally mustered into service under General Order No. 131, of 1864, are, by the Secretary of War, not regarded as in commission within the intent of the act of March 3, 1865, (13 Stat., 487.)—*Vol. 28, p. 222.*

c.—Close of the war ; under the act of March 3, 1865.

1241. The medical officer of a board of enrolment mustered out of service on account of the close of the war, is not entitled to the three months' extra pay allowed by the act of March 3, 1865, (13 Stat., 497, sec. 4.)—*Vol. 28, p. 353.*

1242. An officer discharged after the close of the war, in consequence of the expiration of his term of service, is not entitled to the three months' extra pay allowed by act of March 3, 1865. (13 Stat., 497, sec. 4.)—*Vol. 28, p. 348.*

NOTE.—But modified by the act of July 13, 1866, (14 Stat., 94,) to include officers discharged after April 9, 1865.

1243. An officer discharged after the close of the war in consequence of his regiment being consolidated with another, whereby he became supernumerary, is not entitled to three months' extra pay.—*Vol. 28, p. 479.*

NOTE.—Modified by act of July 13, 1866 (14 Stat., 94) to include all officers below the rank of brigadier generals honorably discharged after April 9, 1865.

1244. If the order mustering the officer out of service states that his discharge was on account of the close of the war, or because his services were no longer needed, he is entitled to the three months' extra pay. But a discharge for disability does not come within the rule.—*Vol. 28, pp. 460, 474.*

1245. The three months' extra pay under the act of March 3, 1865, (13 Stat., 497,) is a gratuity personal to the beneficiary, and does not descend to the heirs of the officers who were entitled thereto, but died before receiving it.—*Vol. 29, pp. 510, 366, 367.*

1246. The widow of a deceased officer does not inherit any rights that would have accrued to him by the act of March 3, 1865, (13 Stat., 497,) and July 13, 1866, (14 Stat., 94,) the law making no provision for the descent of this extra pay to the heirs of an officer in case of his death.—*Vol. 29, p. 483.*

1247. Officers discharged from the volunteers to accept appointments in the regular army are entitled to the three months extra pay under the act of March 3, 1865, (13 Stat., 497, sec. 4,) if the conditions of this act be fulfilled. (See order of Secretary of War, July 16, 1866.)—*Vol. 30, p. 131.*

1248. An officer commissioned by a governor and doing duty prior to the third day of March, 1865, but not mustered until after that date, is not entitled to three months' extra pay.—*Vol. 28, p. 198.*
TAX, V, 2039.

V.—STOPPAGE OF PAY.

1249. The law of January 25, 1828, (4 Stat., 246,) requiring a stoppage of pay in all cases where the officer is a debtor to the government, is not in derogation, nor in any way a modification of the

3d section of the act of May 15, 1820, (3 Stat., 592,) requiring the Comptroller to report delinquents for suit. See also acts of September 2, 1789, (1 Stat., 66;) and March 3, 1809, (2 Stat., 536.)—*Vol. 6, p. 448.*

1250. It is clear from the language of this statute of January 25, 1828, (4 Stat., 246,) that no discrimination is made by the law as to the character of the stoppages to be made against delinquent officers. But under the opinion of the Attorney General it is held admissible to allow their rations and emoluments.—*Vol. 29, p. 493.*

1251. A stoppage required by the laws of January 25, 1828, (4 Stat., 246,) includes the additional pay of the officer for responsibility for clothing, arms, and accoutrements of the company, as well as his regular monthly pay. His allowances for subsistence, quarters, and fuel are not included. See *Opinions Attorneys General*, March 22, 1831.—*Vol. 2, p. 420; vol. 29, p. 493; vol. 12, p. 307; vol. 8, p. 523.* CLOTHING, 500.

1252. Officers of the army can draw no part of their pay proper when stopped by the President.—*Vol. 14, p. 273.*

1253. While an officer is in service, his pay is liable to be applied to the discharge of his just indebtedness, however long he may escape being called upon to refund, or by whatever accident or oversight the delay has occurred, and that without conferring on him any right of resort to the judicial branch of government. *Opinions Attorneys General*, March 26, 1834, vol. 2, p. 629; *United States vs. Bank of Metropolis*, 15 Peters, 377; act of March 3, 1825, (4 Stat., 114, sec. 43.)—*Vol. 20, pp. 429, 432.*

1254. No payment for service can be made to an officer in arrears to the government until he shall have paid any balance found against him, and the Supreme Court decided that the United States possesses the general right to apply all sums due for such pay and emoluments to the extinguishment of any balances due to them. (15 Peters, 370.) This right is absolute and exists independently of any special statute on the subject.—*Vol. 19, pp. 417, 418.*

1255. The department has the election to stop officers' pay for any balance due the United States, and is not compelled to resort to suit at the instance of officers in arrears to the United States. Taaking the whole law into consideration and connection, the election in this class of cases is with the Treasury Department and not with the officer.—*Vol. 19, pp. 417, 418.* JUDGMENT OF COURT, 1005.

1256. The additional pay of \$10 per month for responsibility of arms, &c., is as liable to be stopped as any other pay of an officer. See act of January 25, 1828, (4 Stat., 246,) 15 Peters' R., 370.—*Vol. 20, pp. 169, 173.*

1257. If, by act of January 25, 1828, (4 Stat., 246,) the United States is under obligation to commence suit in all cases of stoppage on the demand of the party whose pay is withheld under that law, yet it does not create the converse obligation to stop an officer's pay

whenever he may choose to demand that a suit should be instituted against him to recover a balance claimed by the United States.—*Vol. 21, pp. 450, 451.*

1258. When the pay of an officer is stopped to meet his liability to the government, he should be credited the amount as of the time it becomes due, and not as of the time his account is stated and settled by the Auditor; and interest should be charged on the balance only.—*Vol. 21, p. 183.*

1259. No payment shall be made to an officer who is in arrears to the United States until he shall have accounted for and paid into the treasury of the United States all sums for which he may be liable. Act January 25, 1828, (4 Stat., 246.)—*Vol. 17, p. 325.*

1260. An officer certifying to the muster-out roll of a company will be held responsible for payments made under his certificate. General Orders Nos. 53, 65, and 68, 1862; Army Regulations, paragraphs 1006, 1007; Army Regulations, edition 1863; act of December 27, 1862, (12 Stat., 633.)—*Vol. 25, pp. 465, 466. COMPTROLLER'S OFFICE, 528.*

VI.—SOLDIERS' PAY.

a.—Generally.

1261. Privates in the army, enlisted for five years prior to March 2, 1833, were entitled to full pay of \$6 per month after they had served the first two years of their enlistment, and to receive such retained pay, if any, as had accrued under the 2d section of the act of March 2, 1833, (4 Stat., 647,) provided they had served honestly and faithfully during that portion of their enlistment.—*Vol. 5, p. 139.*

NOTE.—By the act of May 8, 1792, (1 Stat., 280, section 4,) it is enacted "that no assignment of pay made after the first day of June next, by a non-commissioned officer or private, shall be valid." This law is still (1856) in force. See law of December 24, 1861, (12 Stat., 331, in regard to allotments.)

1262. When a soldier is discharged and his account settled and paid by a paymaster, the payment purporting to be in full, that payment is to be considered final unless shown by conclusive testimony to have been erroneous.—*Vol. 12, p. 157.*

1263. The regiment of mounted riflemen, raised under the act of May 19, 1846, (9 Stat., 13,) which gives the President no authority to convert the regiment into one of infantry, is entitled to dragoon pay even before the men were mounted.—*Vol. 11, p. 326.*

1264. There is no grade of armorer in the line of the army. But when a man, mustered as such, performed the duties of farrier and blacksmith, he may receive the pay of that grade.—*Vol. 15, p. 393.*

1265. The order No. 174, War Department, of April 22, 1864, must, of course, be viewed as the order of the President, who has by law authority to dismount a cavalry regiment, and to prescribe the conditions upon which it shall be made to serve as infantry. Among the conditions named in the order are neglect and waste of its horses

and inefficiency in the field. Such causes are inconsistent with any claim to cavalry pay by troops dismounted and serving as infantry.—*Vol. 26, p. 188.*

NOTE.—The foregoing applies only to cases where the organization has been changed from cavalry to infantry by orders of the War Department.

1266. A soldier whose name is not borne on company roll, claims pay and travelling allowances for services in 1814. Held, that in such a case parol testimony to supply deficiencies or correct illegal errors upon the rolls is inadmissible and the claim not valid. The accounting officers have no power upon any evidence to place the name of the claimant upon the company roll.—*Vol. 21, pp. 571, 572; vol. 22, p. 101.*

1267. Volunteer engineers and sappers and miners are entitled to the same pay as those of the regular army. Act of July 17, 1862, (12 Stat., 597, section 20.)—*Vol. 24, pp. 194, 195.*

1268. The pay of volunteers in the department of the West or department of Missouri, dates from acceptance and employment. And claims should be presented in the first instance to the commission appointed therefor and not to the accounting officers. Resolution of July 12, 1862, (12 Stat., 623.)—*Vol. 24, pp. 564, 565.*

1269. Pay will not be allowed for drum-majors or leaders of band prior to the law creating them. July 29, 1861, sec. 4, (12 Stat., 280.)—*Vol. 24, p. 140.*

1270. There is no law or regulation under which a private soldier can be allowed the pay of a lieutenant for the performance of duty in the subsistence department — *Vol. 12, p. 302.*

1271. Assignments of pay by non-commissioned officers and privates are invalid. But when certificates of discharge were given in payment of a debt, or when the claim was purchased at the time of discharge, with the intent that assignee should receive the amount due, payment may be made. Act of May 8, 1792, (1 Stat., 280, section 4.)—*Vol. 19, p. 478.*

1272. Whenever a specific sum is stopped from the pay of a soldier by competent authority, it becomes immediately payable and may be deducted from any amount due him by the United States.—*Vol. 19, p. 103.*

1273. When a soldier transfers his certificates, the transfer must be made on them, witnessed by a commissioned officer when practicable, or by some other reputable person known to the paymaster. Army Regulations, p. 304, ed. 1857.—*Vol. 21, p. 520.*

1274. When a soldier has been tried, convicted, and sentenced to forfeit his pay, &c., and is subsequently unconditionally pardoned, the pardon restores him all the rights he would have had if the offence had not been committed by him, so far as the unexecuted part of the sentence is concerned.—*Vol. 18, pp. 191, 192*

1275. A soldier, who is taken prisoner by the enemy, is entitled to his pay and allowance during the time he is detained, and to travelling allowance from the place where he is released to his home. Volun-

teers, however, are not, under such circumstances, entitled to compensation for use and risk of horses.—*Vol. 12, pp. 429, 430.*
TRAVEL PAY, II, 2169: DOMICIL, 777, 780.

1276. When volunteers are mustered out of service, the entire regiment or other organization is considered as mustered out at one time and place. General Orders No. 108, April 28, 1863. But prisoners of war are entitled to pay until released from captivity and arrival in a loyal State. And soldiers absent on service at the time of muster out are entitled to pay for the period of their service and until their actual discharge.—*Vol. 25, p. 749.*

b.—*Evidence, enlistment, enrolment, and muster.*

1277. In all cases of claims for pay by discharged non-commissioned officers or soldiers,^a the duplicate certificate of enlistment, service, &c., as prescribed in the regulations of the pay department, must be produced.—*Vol. 12, pp. 358, 360.*

1278. When a soldier who was discharged on the expiration of his term of service, claims pay and clothing, his name not appearing on the regimental pay-roll for the time embraced in his claim, the accounting officers will require the production of the descriptive list, final statement and discharge, as the surest evidence that the claim has not been paid by a paymaster.—*Vol. 27, p. 396.*

1279. When the witnesses required by the regulations to payments made to soldiers cannot be had, other satisfactory proof of the signature may be received.—*Vol. 14, p. 50.*

1280. A receipt by mark, witnessed by two paymasters' clerks, is a substantial compliance with the regulation.—*Vol. 14, p. 75.*
EVIDENCE, 809.

1281. Where the roll bears the receipt of payment of the party witnessed by his commanding officer, and opposite the signature of the person thus receipting is the endorsement, apparently made the same time the roll was prepared for signatures, "absent on furlough," being in the same handwriting, and color of ink similar, held that there was no evidence of payment. And when payment was made at the treasury the paymaster will be charged by the Second Auditor the amount so paid.—*Vol. 25, p. 89.*

1282. A soldier sworn into service soon after enlistment and rejected by the mustering officer on account of disease, is entitled to pay from the date of enlistment to date of rejection by the surgeon at the muster of the company, if the disease was contracted while in service. See paragraph 1638, edition 1861, Army Regulations.—*Vol. 25, p. 269.*

1283. Non-commissioned officers cannot be paid as such prior to organization and muster.—*Vol. 25, p. 333.*

1284. Where one enlisted as private, but was never mustered in, but accepted a commission, he is not entitled to private's pay.—*Vol. 25, p. 442.*

1285. Where a discharged private claimed pay and allowances

from date of enlistment to date of enrolment and organization, a period of sixty days, the application was rejected—*Vol. 25, pp. 261, 262.*

NOTE.—Enrolled men did not, as a general rule, before the act of July 22, 1861, take the field prior to muster.—*Adjutant General's letters November 10, 1862, and November 21, 1862.*

1286. A soldier served with his company but was never mustered into service, having been regularly discharged on a surgeon's certificate. Held, that he was entitled to pay.—*Vol. 25, pp. 471–473, 531.*

1287. When the company rolls show that the numbers are less than the minimum provided by law, and there is no evidence that the regiment was ordered into active service, payment from enrolment will not be allowed. Act of August 6, 1861, (12 Stat., 326, sec. 2.) General Orders, War Department, No. 77.—*Vol. 24, pp. 456, 457.*

1287a. The practice has been to pay officers and privates doing military duty beyond the period of their term of service, as fixed by orders or enrolment, provided they have been held to duty by competent authority after the discharge of their organizations. But the order of the Secretary of War, February 21, 1866, forbids such payment unless the authority of the War Department be first obtained.—*Vol. 29, p. 68.*

1288. Soldiers are entitled to be paid from date of acceptance into United States service by muster, or when organized and accepted as companies by governors of States. Act of July 25, 1861, (12 Stat., 274;) act of August 6, 1861, (12 Stat., 326.)—*Vol. 25, p. 563.*

1289. The period of service of the 100 days' troops is reckoned from the date of muster into the United States service, but their pay is computed from the date of their arrival at the general rendezvous. *Vide* order of Secretary of War of August 18, 1864.—*Vol. 29, p. 282.*

c.—Discharge; desertion; arrest, &c., by civil authority.

1290. When, from the situation of his company, or the nature of the service, a soldier cannot receive his discharge when his term expires, and is from necessity retained, doing duty as a soldier, he is to be paid up to the time of his actual discharge.—*Vol. 6, p. 149.*

1291. A soldier discharged on *habeas corpus* as a minor, forfeits all pay and allowances previously due, both by the regulations of the army and upon general principles.—*Vol. 15, p. 38.*

1292. When an officer or soldier is furloughed, in anticipation of his discharge or the expiration of his term of service, or is discharged while furloughed or on leave, he cannot claim for the remainder of his term both his travel pay and his pay as in service.—*Vol. 12, p. 362.*

1293. A private soldier of militia or volunteers, who is illegally and against his will discharged from service, is entitled to his pay up to the time of the discharge of the company to which he belonged, or to the expiration of his term of enlistment.—*Vol. 13, p. 37.*

1294. A drafted man is entitled to be paid as a soldier for the time the United States holds him to service as such, even though discharged within three months from enrolment, if there be no fraud, concealment of disability, &c., on his part.—*Vol. 26, p. 265.*

1295. Payment is due a soldier until the day of his discharge, unless he be in hospital or on furlough at the time his company is discharged; and the date of certificate of discharge is conclusive when the rolls are contradictory.—*Vol. 25, p. 443.*

1296. A soldier who has been enlisted and moved to a distant point by military orders is entitled to his pay, &c., if discharged for disability, even within three months of his enlistment, or if discharged for any cause arising plainly after his enlistment.—*Vol. 27, p. 178.*

1297. A soldier discharged from the military service of the United States under writ of *habeas corpus* as a minor, forfeits his claim to pay and bounty. Act of January 27, 1814, (3 Stat., 94.)—*Vol. 16, p. 130; vol. 25, p. 596.*

1298. A soldier discharged by writ of *habeas corpus* is not entitled to any arrears of pay, bounty, &c., due under the unfulfilled contract of his enlistment, but payment under a former contract fulfilled is not thereby precluded.—*Vol. 20, p. 340.*

1299. A soldier discharged because he is a minor, forfeits the pay, clothing, bounty, and allowances, due at the time of discharge. And a disbursing officer making payment in such cases, and the records showing that the discharged soldier was a minor, is held accountable, and not the certifying officer.—*Vol. 21, pp. 266, 267.*

NOTE.—The act of February 13, 1862, sec. 2, (12 Stat., 339,) repeals the 5th section of act of September 28, 1850, (9 Stat., 564,) authorizing discharge of minors. But the act of February 24, 1864, (13 Stat., 10, sec. 20,) allows the Secretary of War to discharge minors, under the age of eighteen, at the time of application, on proof of non-consent of parents or guardians, and on repayment of bounties, &c. For provisions as to minors aged sixteen, see act of July 4, 1864, (13 Stat., 380, sec. 5;) see also Appendix, p. 510, Army Regulations, ed. 1863.

1300. In case of discharge papers being lost, the payment of arreages will be delayed for six months from the date of the alleged loss.—*Vol. 17, pp. 125-152.*

1301. A sick soldier unable to travel, and from motives of humanity retained in hospital after the muster out of his regiment, has no legal or equitable claim for pay beyond that period.—*Vol. 25, p. 749.*

1302. Soldiers absent from their organizations in hospital, are to be considered as discharged at the same time as the organization to which they belonged.—*Vol. 28, p. 617.*

1303. Soldiers not on duty and absent from their companies on discharge of regiment are considered mustered out with their companies, and not entitled to pay thereafter.—*Vol. 28, p. 768.*

1304. No crime except desertion forfeits the pay of a soldier, except

murder by law. 12. see 2d Comp. Dec 2,

upon sentence of a court-martial, unless in consequence of the crime the soldier is withdrawn from service.—*Vol. 15, p. 448.*

1305. A soldier tried for desertion and acquitted of all blame, is entitled to pay, not only to date of arrest, but for the time he was in custody.—*Vol. 25, pp. 537, 538.* DESERTER, II, 697, 708.

1306. A soldier absenting himself without leave, but not held to be a deserter, and subsequently restored to duty without trial, does not forfeit any pay which may have been due him when he absented himself, but does forfeit his pay during his absence.—*Vol. 17, p. 330.*

1307. A soldier whose pay during the term for which he enlisted was thirteen dollars per month, was sentenced to make good time lost by absence without leave, and during that time Congress raised the pay of soldiers to sixteen dollars per month. Held, that he was not entitled to the increase, as that, if allowed, would give him a larger pay than if he had served faithfully without having absented himself from duty.—*Vol. 31, p. 629.*

1308. A soldier arrested for absence without leave, but returned to his regiment without trial, and at the expiration of his term of enlistment duly discharged without being noted as a deserter, cannot legally be deprived of his pay.—*Vol. 25, p. 713.*

1309. Where a soldier is accounted for on the rolls of his company up to a given date, but is borne on all subsequent rolls as absent without leave, never having joined his company or performed duty. Held that, the charge of desertion being removed, he may be paid only to said date.—*Vol. 28, p. 694.*

1310. A soldier whose first term of service expired was honorably discharged, with arrears of pay and bounty due and payable at the time of discharge. He transferred and assigned his pay account, according to law and the regulations, to another party. He re-enlisted and afterwards deserted. Held that this desertion from a second term of service, wholly distinct from the first, cannot affect any right to pay, &c., already accrued, under a contract which he had fulfilled.—*Vol. 29, p. 518.* DESERTER, II, 710.

1311. A soldier under arrest by the civil authority on a criminal charge will be entitled to his pay for the time he was in custody, provided he is tried and acquitted, or discharged without trial.—*Vol. 10, p. 189.*

1312. When a soldier is convicted, by the civil authority, of a crime, and is thereby withdrawn from the service of the United States through his own fault, all pay, &c., due at the time of his conviction is forfeited. See act March 3, 1813, (2 Stat, 819, sec. 5,) making provision for the army regulations.—*Vol. 16, p. 60; vol. 18, p. 350; vol. 20, p. 137.* COURTS MARTIAL, 620.

1313. A soldier convicted of crime by the civil authorities and imprisoned, but subsequently pardoned on the ground that his innocence of the crime was shown, is entitled to pay for the time he was imprisoned, if within the term of his enlistment, as he was withdrawn from the service without fault on his part. See General

Orders, War Department, No. 20, July 21, 1853.—*Vol.* 16, *pp.* 451, 452.

1314. A soldier unjustly imprisoned at and after the expiration of his term of service, is not entitled to pay beyond the time of his enlistment.—*Vol.* 26, *p.* 79.

1315. A soldier was arrested by the civil authorities for intoxication, convicted and sentenced by the court to 10 days in the county jail. Held that this is not within the prohibition of paragraph 162, Paymaster's Manual, or paragraph 1312, Digest. A venial offence, such as this, is too trifling in its effects on the soldier's service to justify any other penalty than the forfeiture of his pay and allowances for the time lost to the service.—*Vol.* 31, *pp.* 145, 146.

VII.—EXTRA PAY.

1316. By the joint resolution of July 29, 1848, (9 Stat., 339,) claims for the three months' extra pay, provided for by the 5th section of the act of July 19, 1848, (9 Stat., 248,) are to be settled by the paymaster's department of the army, under such regulations as the Paymaster General, with the approval of the Secretary of War, shall establish.—*Vol.* 12, *p.* 347.

1317. Private John Ahern, tried by court-martial, was sentenced to forfeit his pay and allowances for six months. Held that, under the act of March 27, 1854, (10 Stat., 269,) granting relief to the sufferers, he was entitled to the three months' extra pay. The gratuity granted to sufferers on board the *San Francisco* is not subject to stoppage in case of persons under sentence of court-martial, or by any other tribunal. When Congress grants a gratuity neither a court-martial nor any other court has a right to direct a stoppage.—*Vol.* 19, *p.* 154.

1318. On the discharge of a private soldier who is entitled to the three months' extra pay, under the act of July 19, 1848, (9 Stat., 248,) and who, at the time of his discharge, was receiving the additional pay of two dollars per month on a certificate of merit, the additional pay should be allowed as part of the three months' extra pay.—*Vol.* 13, *p.* 272.

1319. Discharged soldiers are not entitled to the increased allowance given by the act of September 28, 1850, (9 Stat., 504,) as travelling pay, the act allowing them the extra pay only when *serving* in Oregon and California, and not after a discharge from service. Nor is an apprehended deserter, whose period of service would have expired prior to July 1, 1850, and who receives an honorable discharge, entitled to the increased pay while making up time lost by desertion.—*Vol.* 14, *pp.* 211, 212. DESERTER II, 701.

1320. A soldier who, for successive enlistments, has received a certificate of merit allowing him, under the 17th section of the act of March 3, 1847, (9 Stat., 184,) and section 3, act of August 4, 1854, (10 Stat., 575,) two dollars a month in addition to his regular pay, is

entitled to receive the same so long as he continues in the military service, whether in the regular army, ordinary volunteers, or veteran reserves.—*Vol. 29, p. 284.*

1321. A widow of a deceased soldier, intermarrying, is entitled to the three months' extra pay due her deceased husband, under the act of July 19, 1848, (9 Stat., 248, sec. 5,) and her receipt may be taken as sufficient evidence of payment.—*Vol. 13, p. 119.*

1322. The three months' extra pay provided for by the act of July 19, 1848, (9 Stat., 248, sec. 5,) is a gratuity, and not, like a balance of wages, part of the assets of the soldier's estate, and belongs by the terms of the law, first, to the widow; secondly, to the children; thirdly, to the parents; and fourthly, to the brothers and sisters.—*Vol. 12, p. 426.*

1323. A carriage maker, who was required to do duty in the ranks with his corps, is entitled to receive a certificate of merit, under General Order No. 4, January 24, 1849, and is entitled to the three months' extra pay, under act of July 29, 1848, (9 Stat., 248, sec. 5.)—*Vol. 28, p. 24.*

1324. A soldier promoted to the rank of hospital steward, if doing duty as such at the time of his discharge from service, is entitled to the three months' extra pay in that capacity.—*Vol. 13, p. 131. HOSPITAL STEWARDS, 970.*

1325. The act of July 19, 1848, (9 Stat., 248, sec. 5,) granting three months' extra pay to soldiers who served in the war with Mexico, applies to those only who have joined their companies for service.—*Vol. 14, p. 295.*

1326. Actual service in the Mexican war is necessary to entitle a soldier to the extra pay allowed by the act of July 19, 1848, (9 Stat., 248, sec. 5.) Hence, service in the army during the continuance of the war, but away from its seat, is not sufficient.—*Vol. 15, p. 382.*

1327. Soldiers who served in the war with Mexico, and have received certificates of merit for distinguished services, being in the army at the time of the passage of the act of August 4, 1854, (10 Stat., 575,) increasing soldiers' pay, and those who have or may enlist, are entitled to the increase of pay.—*Vol. 19, p. 339.*

1328. The 17th section of the act of March 3, 1847, (9 Stat., 186,) gives the private soldier who has received a certificate of merit the two dollars per month additional pay allowed by said act, during the residue of his service under the enlistment by which he is held at the time of granting the certificate, although he may have been subsequently appointed a non-commissioned officer.—*Vol. 12, p. 375.*

1329. A private who has received a certificate of merit under the 17th section of the act of March 3, 1847, (9 Stat., 186,) is not deprived of the two dollars additional pay by being appointed a non-commissioned officer.—*Vol. 19, p. 339.*

1330. A soldier holding a certificate of merit, who re-enlists in the army in the manner specified in the 29th section of the act of July 5, 1838, (5 Stat., 260,) is entitled to have the additional two dollars per month, given by his certificate, included in computing the three

months' extra pay allowed him by that act, as bounty for re-enlistment.—*Vol. 15, p. 337.*

1331. Quartermasters' clerks are not entitled to three months' extra pay, under act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol. 16, p. 112. CLERKS, 471.*

1332. The members of Frémont's battalion, under the act of August 5, 1854, (10 Stat., 582, sec. 4,) are entitled to all the benefits of all the acts of Congress providing for the enrolment of volunteers in the Mexican war. By this provision a volunteer of the battalion is entitled to pay and the increased travelling allowance: see law of May 13, 1846, (9 Stat., 9,) and June 8, 1846, (9 Stat., 17;) to bounty: see law of February 11, 1847, (9 Stat., 123;) to clothing: see law of January 26, 1848, (9 Stat., 210,) and General Order of War Department No. 23, May 3, 1848—but not to the three months' extra pay provided for those who had served out their term, &c. See law of July 19, 1848, (9 Stat., 248, sec. 5,) that act not providing for the enrolment of volunteers.—*Vol. 17, p. 460; vol 21, p. 165.*

1333. Officers and soldiers of the regular peace establishment are not entitled to the three months' extra pay. See act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol. 27, p. 192.*

1334. Indebtedness of deceased soldier or officer to the United States must be deducted from the three months' extra pay due the heirs.—*Vol. 19, p. 533. DESCENT AND DISTRIBUTION, I, 671, 672.*

1335. Artificers are not entitled to the extra pay granted by the act of Congress August 4, 1854, (10 Stat., 576, sec. 6,) which made no change in the act of March 2, 1819, (3 Stat., 488,) except to increase the daily extra pay for constant labor, leaving the classes of persons entitled to it the same as before.—*Vol. 25, p. 565.*

1336. Recruits who have not left the United States, or who have not joined their respective companies, are not entitled to the extra pay allowed by act of July 19, 1848, (9 Stat., 248, sec. 5.) Regulations War Department, August 3, 1848; resolution July 29, 1848, (9 Stat., 339;) resolution July 29, 1850, (9 Stat., 562.)—*Vol. 19, p. 13.*

1337. When a wagon master, for his own benefit, sought his discharge before his term of service expired, he is not entitled to the extra pay provided for those who served out such term and are honorably discharged, nor is he entitled to transportation.—*Vol. 22, pp. 483, 484.*

1338. Non-commissioned officers and enlisted men are not entitled to the three months' extra pay under the provisions of the act of March 3, 1865, (13 Stat., 497, sec. 4.)—*Vol. 28, p. 155.*

1339. The three months' extra pay to soldiers having been prisoners of war, is granted not under a law, but by the order of the War Department of May 30, 1865, and the mustering officer by the order having been instructed to enter the proper remarks on the muster-out rolls, showing the amounts due under this order, it is regarded, in the

absence of any entry, that the claimant was not within the meaning of the Secretary's order allowing three months' extra pay.—*Vol.* 29, *p.* 283.

VIII.—EXTRA DUTY.

1340. To entitle soldiers to compensation under the act of March 2, 1819, (3 Stat., 488,) the ten days' extra duty required by that act should be as nearly continuous as is consistent with the performance of the regular duties (such as musters for inspection, &c.) that are imposed upon them. See acts of August 4, 1854, (10 Stat., 576, sec. 6,) and March 3, 1863, (12 Stat., 736, sec. 35.)—*Vol.* 5, *p.* 233.

1341. A sergeant employed as assistant clerk in one of the bureaus of the War Department, or as assistant in a subsistence storehouse, is entitled to the benefit of the provisions of act of March 2, 1819, (3 Stat., 488.)—*Vol.* 7, *p.* 212.

1342. When a quartermaster paid forty dollars per month to a soldier for services as clerk in the post office, the excess of fifteen cents per diem was disallowed under the acts of March 2, 1819, (3 Stat., 488,) and August 4, 1854, (10 Stat., 576, sec. 6.)—*Vol.* 23, *p.* 32.

1343. Privates detailed as clerks and employed at department or division headquarters in constant service of not less than ten days, are entitled to forty cents per diem extra pay. Act of July 5, 1862, (12 Stat., 509;) Army Regulations, par. 902; act of March 3, 1863, section 35, (12 Stat., 736,) repeal extra pay. But men enlisted to serve as clerks at the geographical department, and division headquarters, are entitled to the extra pay. General Orders War Department No. 192, 1863.—*Vol.* 25, *p.* 650.

1344. Extra pay will not be allowed to soldiers employed as clerks, except at division or department headquarters. General Order No. 22, May 27, 1852. See decision of Secretary of War, May 10, 1852.—*Vol.* 20, *p.* 136.

1345. Under the regulations of the army as they now stand, the construction put upon the act of March 3, 1863, and the provisions of General Order of the War Department No. 192, June 25, 1863, there is nothing to forbid the payment of the per diem to ordnance sergeants and hospital stewards, being enlisted men, regularly detailed for employment as clerks and messengers in the military offices in Washington, and at the several geographical divisions and department headquarters, if the War Department decides that such is not their appropriate work. See acts of April 16 1862, (12 Stat., 378, sec. 1,) and June 20, 1864, (13 Stat., 144, sec. 1.)—*Vol.* 27, *p.* 179.

1346. It being the prerogative of the War Department to decide when a soldier is employed within the meaning of the act of July 13, 1866, and that department having designated no clerical duty as

coming within the act, except that at the bureaus of the War Department, at the headquarters of the army, and military divisions and department headquarters, no other will be recognized by the accounting officers as entitling the soldier to extra duty pay.—*Vol. 29, p. 582.*

1347. The Army Regulations of 1861, paragraph 903, prohibit payment to enlisted men of the engineer department for extra duty service. The act of March 3, 1863, sec. 35, (12 Stat., 736,) is construed by General Orders No. 192, June 25, 1863, not to exclude enlisted men as clerks and messengers in the military offices at Washington, and at the several geographical and departmental headquarters from receiving extra pay as heretofore; and by the act of April 1, 1864, sec. 2, (13 Stat., 39,) an exception is made in favor of men employed at West Point. A payment for extra duty service made to an artificer of the engineer department subsequent to the act of 1863, and credited to him on the approval of the Secretary of War, was held to have been erroneously made, and the settlement withdrawn in order that he might be debited with the amount.—*Vol. 31, pp. 46, 47.*

NOTE.—The act of July 13, 1866, sec. 7, (14 Stat., 93,) in effect repeals the 35th section of the act of March 3, 1863.

1348. On the 1st day of April, 1835, the Secretary of War prohibited, by regulation, the allowance of commutation for the whiskey ration to sergeants acting as clerks and messengers; and that regulation continued in force till the 16th of October, 1846, when it was rescinded by the Secretary of War. Held, that during the intervening period sergeants acting as clerks and messengers were not entitled to the allowance.

1349. The commutation of whiskey rations to extra-duty men is to be charged to the particular department in which the labor is performed.—*Vol. 17, p. 200–227.*

1350. Privates of volunteers and militia are entitled, for extra duty, to no more than the regular forces for extra pay under the law of 1819 and 1854.—*Vol. 6, p. 458.*

1351. A soldier employed in the commissary and quartermaster's departments, at the same time, is not allowed the extra pay for both.—*Vol. 9, p. 517.*

1352. The act of March 2, 1819, (3 Stat., 488,) applies to any sergeants in the army, whether of ordnance or otherwise, if employed in the manner specified. By the term "constant labor," used in that act, is intended actual manual labor out of the regular line of duty. The care of stores at a post is not such employment as entitles an ordnance sergeant to the extra allowance given by the act.—*Vol. 15, p. 224.*

1353. A soldier, when performing duty as acting sergeant major, is doing a proper military duty, and not a fatigue or extra duty entitling him to the benefit of the act of March 2, 1819.—*Vol. 13, p. 116.*

1354. Carrying an express is not considered as coming within the term "fatigue duty," for which fifteen cents per day is allowed to a private soldier by the regulations.—*Vol. 6, p. 557.*

1355. An assistant to an assistant commissary of subsistence, who is detached on command, or as a witness before a court-martial, and receiving seventy-five cents per day while so detached, cannot for the same period receive the per diem for fatigue duty.—*Vol. 11, p. 316.*

1356. The allowance of the Secretary of War to "extra duty" men to commute their rations at seventy-five cents, does not deprive them of their per diem under the act of March 2, 1819, (3 Stat., 488,) unless by the terms of the allowance the said per diem is included in the seventy-five cents and the men accept it. Enlisted men employed to work on fortifications, surveys, cutting roads, and other constant labor of not less than ten days, are entitled to extra pay.—*Vol. 16, p. 490.*

1357. Issuing subsistence stores or rations is not such constant labor as entitles a soldier to the per diem for extra duty. Acts of March 2, 1819, (3 Stat., 488;) August 4, 1854, (10 Stat., 576, sec. 6;) and April 5, 1832, (4 Stat., 504, sec. 2).—*Vol. 19, pp. 479, 480, 500, 564.*

1358. In case of Ordnance Sergeant Gally, it was held that care of public property and stores was a part of his official duties, and not properly fatigue duty, for which he would be entitled to per diem compensation. Act of March 2, 1819, (3 Stat., 488;) act of August 4, 1854, (10 Stat., 576, sec. 6).—*Vol. 20, pp. 290, 291.*

1359. A soldier performing scout duty presented vouchers for such service, approved by his commanding general. Held that as the man was a soldier he was liable to be detailed for that duty without additional pay.—*Vol. 29, p. 29.*

1360. Soldiers in the engineer corps are not entitled to extra pay as laborers on fortifications or surveys. Acts of March 2, 1819, (3 Stat., 488;) May 15, 1846, (9 Stat., 12;) and August 4, 1854, (10 Stat., 576, sec. 6).—*Vol. 22, p. 105.*

1361. Engineer soldiers and the company of sappers and miners and pontoniers, act of May 14, 1846, (9 Stat., 12,) and ordnance men, are not entitled to per diem under act of March 2, 1819, (3 Stat., 488.) See Army Regulations, ed. 1835, par. 155; ed. 1841, pars. 243, 903; ed. 1863, par. 903.—*Vol. 16, p. 295.*

1362. When whole companies or regiments are employed on entrenchments, it is a part of their duty for which they are not entitled to extra pay.—*Vol. 24, pp. 366, 367.*

1363. Non-commissioned officers, musicians and privates, when employed as working parties, agreeably to Art. XLIV, under officers of the quartermaster's department, shall be mustered monthly for extra pay by the inspector or other officer appointed for that purpose, on duplicate rolls. Army Regulations, par. 1025, ed. 1841.—*Vol. 17, pp. 232, 233.*

1364. Farriers of mounted companies are not entitled to per diem under acts of March 2, 1819, (3 Stat., 488,) and August 4, 1854, (10 Stat., 576, sec. 6,) for acting as blacksmiths in the quartermasters' department.

Farriers are enlisted at a higher pay for what may be termed constant labor, but which, from the nature of their duties, must be of a somewhat intermittent character. Their time, for at least the usual term of daily labor, belongs to the United States, and is to be employed for the public benefit in the discharge of their appropriate duties whenever directed by proper authority to be performed.—*Vol. 20, p. 116.*

1365. A soldier was condemned for a military offence to forfeit the pay and allowances due him at the time of his conviction, and to labor on the fortifications for a certain period. Held that work thus performed upon fortifications is not a withdrawal of the culprit from the military service, and therefore no forfeiture of pay during the time is incurred.—*Vol. 31, p. 519.*

1366. By the acts of March 2, 1819, (3 Stat., 488,) and August 4, 1854, (10 Stat., 575,) work on fortifications is recognized as one of the employments of non-commissioned officers, musicians, and privates, and extra pay provided for its performance. It is, therefore, military service.—*Vol. 31, p. 519.*

1367. To entitle one to extra duty pay, it must first be shown that he was so detailed by competent authority, on duly certified muster rolls, agreeably to par. 1141, Army Regulations, or that such rolls were made by the proper officer, and were lost in their transmission to the Quartermaster General.—*Vol. 29, p. 335.*

1368. The accounting officers have no power to correct the rolls, to supply omissions therein, so that a claimant's application may come within the regulations. The Secretary of War alone has power to do this.—*Ibid.*

1369. Invalid and disabled soldiers of the army who are inmates of the Soldiers' Home are not entitled to extra duty pay.—*Vol. 31, p. 330.*

IX.—RETAINED PAY.

1370. Under the law of January 12, 1847, (9 Stat., 117,) a recruit cannot claim his retained bounty until he shall have joined for duty the regiment in which he is to serve. But if the government, by disbanding him, put it out of his power to join his regiment, the retained bounty should be paid him.—*Vol. 11, p. 490.*

NOTE.—The above act grants twelve dollars to recruits for the Mexican war: six dollars on enlistment and six dollars when they join their regiment for duty.

1371. A soldier who is sentenced by a court-martial to forfeit a month's pay, does not thereby forfeit his retained pay.—*Vol. 10, p. 213.*

1372. A soldier re-enlisting before the expiration of his first term of service, is entitled to his retained pay for that term of service to the time of re-enlistment only.—*Vol. 10, p. 321.*

1373. When a soldier dies before the expiration of his term of service, or is discharged upon a surgeon's certificate, the retained pay may be claimed.—*Vol. 11, p. 206.*

1374. When a soldier is slain in battle or disqualified for further duty by reason of wounds received, or other inability brought on in the service, the government has no right either in law or equity to withhold his retained pay.—*Vol. 5, p. 573; vol. 6, p. 150.*

1375. A soldier discharged on surgeon's certificate of disability, or killed in action after three months from enlistment, (see paragraph 737, Army Regulations, edition 1841,) is entitled to his retained pay.—*Vol. 27, p. 178.*

1376. When a soldier is *dishonorably* discharged before the expiration of his term of enlistment, without any cause being assigned, the paymaster will withhold the retained pay until the cause of discharge is ascertained, and then refer the subject to the Paymaster General, if necessary.—*Vol. 11, p. 213.*

1377. When a soldier is discharged from service by reason of his own misconduct, his retained pay is thereby forfeited, and no part of it can be paid to the sutler or laundress.—*Vol. 10, p. 76.*

1378. A soldier discharged for "*utter worthlessness*" before the expiration of his term of service, is not entitled to his retained pay.—*Vol. 11, pp. 204, 207, 211.*

1379. If a soldier be discharged at his own request before his term expires, he is entitled to his retained pay up to the time of an honorable discharge.—*Vol. 18, p. 184.* ORDNANCE SERGEANTS AND SERGEANTS OF ORDNANCE, 1082.

X.—OFFICERS' PAY—MARINE CORPS.

1380. The officers of the marine corps, except the adjutant and inspector, are entitled to the same pay and allowances as officers of similar grades in the infantry of the army.—*Vol. 6, p. 467.*

NOTE.—See naval appropriation act of August 5, 1854, (10 Stat., 556,) putting non-commissioned officers and privates of marine corps on the same footing as infantry of the army, as to pay, &c.

1381. The law of September 28, 1850, (9 Stat., 504,) giving additional rations to officers of engineers commanding posts, cannot be construed to operate longer than the fiscal year for which the appropriation was made.—*Vol. 19, pp. 341, 342, 426, 427.*

1382. Only one officer can receive the allowance of senior of marines for a squadron at the same time. The accounts of officers claiming this allowance must be certified by the commanding officer of the squadron; and it must appear from the certificate that the claimant was the senior marine officer of the squadron for the time charged.—*Vol. 5, p. 79.*

1383. Officers of the marine corps being put on the same footing as officers of infantry of the army, so far as pay and emoluments are concerned, by the 5th section act June 30, 1834, (4 Stat., 713,) are subject to the provisions of the act of March 3, 1863, (12 Stat., 736, sec. 31,) allowing only half-pay and allowances to army officers on leave.—*Vol. 25, pp. 274–276.*

NOTE.—The act of June 20, 1864, (13 Stat., 145, sec. 11,) modifies the foregoing. An officer may have, when allowed by his proper officer, leave of absence without deduction from his pay or allowances, provided the aggregate of such absence be not over thirty days in a year.

1384. An officer cannot place himself on duty, nor relieve himself from duty, so as to affect his allowances. Officers to be entitled to fuel and quarters must be under orders for some duty. Officers in the field are not entitled to commutation of fuel and quarters.—*Vol. 25, pp. 676, 677.*

1385. The leader of the marine band was paid as second lieutenant from July 29, 1861, to April 30, 1864, by virtue of a law of the former date; he also claims the four dollars per month extra pay provided for the marine band by the 5th section of the act of August 18, 1856, (11 Stat., 118.) But he received the pay of a second lieutenant because the pay of the marine corps had been assimilated to that of the army, and, as leader of the band, had, under that assimilation, received the pay and emoluments of a leader of a band in the army; he cannot at the same time be allowed to receive the extra pay of an enlisted man.—*Vol. 28, p. 672.*

XI.—ALLOWANCE TO COMMANDERS OF DETACHMENTS.

1386. Under the opinion of the Attorney General of July 21, 1838, vol. 3, p. 342, the actual command of any number of men sufficiently large to constitute, according to the usages of the Navy Department, a detachment of marines, will entitle the commander, who is responsible for the care of their clothing, &c., to the allowance given in the 2d section of the act of March 2, 1827, (4 Stat., 227.)—*Vol. 6, p. 577.*

1387. A lieutenant of marines, serving with his corps in Mexico, while acting as assistant commissary of subsistence, and also as commander of his company, was allowed the same additional pay as is allowed to officers of the army for performing the duties of acting assistant commissary, and also the ten dollars per month additional pay for his duty and responsibility respecting the arms, clothing, &c.—*Vol. 13, p. 71.*

1388. An officer of marines attached to a navy yard or station, or to a squadron, and charged with the delivery of clothing and responsible therefor, is considered in command of a detachment without regard to the number of marines under his command.—*Vol. 6, p. 579.*

1389. Captains and subalterns in the marine corps are allowed ten

dollars per month when charged with the responsibility for army clothing, &c., of a guard of marines on board vessels of war of the class of frigates and above, and at naval stations.—*Vol. 7, p. 412.*

NOTE.—See Supreme Court, 3 Howard, 566, United States *vs.* Freeman.

1390. Officers above the rank of captain are not entitled to the ten dollars per month for their duties and responsibilities with respect to arms and clothing, &c. See also act of June 15, 1864, (13 Stat., 127.)—*Vol. 7, p. 21.*

1391. The allowance of ten dollars per month for care and responsibility on account of arms, &c., of the marine guard on board a United States vessel, is, under the regulations of the Navy Department of April 11, 1839, irrespective of numerical force.—*Vol. 16, pp. 57, 90*

1392. An officer of marines, not above the rank of captain or below that of lieutenant, is not entitled to the allowance of ten dollars per month for clothing responsibility, unless he commands the number of marines allowed to a ship-of-the-line, or frigate in commission and at naval stations. See Navy Register, 1859, p. 11; decision Secretary of the Navy. The above regulation applied in Lieutenant Greene's case. Acts of March 2, 1827, (4 Stat., 227, sec. 2;) June 30, 1834, (4 Stat., 718 and 713, sec. 2,) and 8th and 10th sections same act. Opinions Attorneys General, vol. 3, p. 342.—*Vol. 21, p. 558, 561.*

1393. Officers in command of men on vessels of a class lower than that of frigates are not entitled to \$10 per month additional.—*Vol. 16, p. 58.*

XII.—BREVET PAY.

1394. Brevet pay is not retrospective as to officers whose accounts had been previously settled. 3 Howard, 566.—*Vol. 16, pp. 54, 90.*

1395. Brevet pay to brevet first lieutenant cannot be allowed, as there is no difference of duty between first and second lieutenants.—*Vol. 16, p. 56.*

1396. The brevet pay of captain of marines cannot be allowed on a frigate except when she is the flag-ship of a squadron, or when her guard is equal, numerically, to a company in the army. A brevet captain in command of a guard on board a frigate is entitled to the pay of a lieutenant only.—*Vol. 16, pp. 87, 159.*

1397. Brevet captains of marines are entitled to brevet pay when in command of separate posts on shore, when the detachment on duty is equal to the guard of a frigate at sea. Brevet majors are entitled to their brevet pay when the detachment is equal to the guard of a ship-of-the-line.—*Vol. 15, p. 468.*

1398. An officer of the marine corps holding a brevet commission is entitled to brevet pay when on duty and exercising a command which, according to the regulations of the army, is appropriate to the same brevet rank in the infantry.—*Vol. 15, p. 468.*

1399. And in applying this rule, inasmuch as the marine corps is not organized in companies, a number of men equal to the legal complement of a company of infantry is to be regarded as a company.—*Ibid.*

1400. And when the command consists of several detachments, each large enough to be regarded as such, and actually separate and distinct, as in different vessels, each of such detachments is to be considered as a company.—*Ibid.*

NOTE.—See also letter from Secretary of Navy, of May 7, 1853, to Second Comptroller. The act of March 3, 1863, (12 Stat., 758,) repeals brevet pay.—*Vol. 27, p. 191.*

XIII.—PRIVATES OF MARINES.

1401. Under the naval appropriation act of August 5, 1854, (10 Stat., 583,) the pay and allowance of non-commissioned officers, privates, and musicians of the marine corps are construed to be the same as that of like grades of infantry in the army; and under the act of July 29, 1861, (12 Stat., 280, sec. 4,) the leader of the marine band is entitled to the pay and emoluments of second lieutenant.

NOTE.—The act of July 17, 1862, (12 Stat., 594, sec. 5,) abolished regimental bands.—*Vol. 25, pp. 36, 37.*

1402. The act of June 20, 1864, (13 Stat., 145,) increases the pay of non-commissioned officers and privates of the army during the "present rebellion," and by the acts of June 30, 1834, (4 Stat., 713,) and August 5, 1854, (10 Stat., 586,) the pay of the officers and men of the marine corps is assimilated to that of the army. But the President, by his proclamation of August 20, 1866, having declared the rebellion to be at an end on that day, it is held that such increase of pay ceases at that date.—*Vol. 29, pp. 491, 492.*

1403. The Secretary of War having decided that the proclamation does not affect the pay and allowances of the army, the same rule will be applied to the pay of the marine corps — *Vol. 29, pp. 491, 492.*

NOTE.—The pay provided by the act of June 20, 1864, was continued in force for three years from the 20th of August, 1866, by the 2d section of the act of March 2, 1867, (14 Stat., 422.)

1404. Marines on board a ship are eligible, and may be paid as surgeons' stewards, masters-at-arms, ship's corporals, and yeomen, provided they are qualified and regularly appointed by competent authority, and provided they relinquish all claim to the pay of marines for the time they are paid as petty officers. When so appointed and so serving, they are to be dropped from the roll of marines and entered on the roll of ship's company, "to be returned to marines when they cease to act as petty officers."—*Vol. 12 p. 194.*

XIV.—EXTRA PAY.

1405. *Semble*, that a private marine, while serving abroad, was dropped from the rolls in consequence of his term of enlistment having expired. He was at the time assigned to duty as master-at-arms.

1406. On the return of the ship to the United States he re-enlisted and was paid, the Secretary of War and Second Comptroller concurring, the additional pay allowed by acts of July 5, 1838, (5 Stat., 260, sec. 29,) and March 2, 1837, (5 Stat., 153, sec. 3.)—*Vol.* 20, *pp.* 124, 125.

1407. Where the proof is that a minor was indentured as an apprentice of the marine corps for the period of 13 years, and was discharged before the expiration of the time, the indenture was thereby terminated; and when the same person afterwards enlists in the marine corps, and is again, after having served his time, regularly discharged, to entitle him to one-fourth additional pay, it must be shown by the certificate of the commanding officer of the vessel that he re-enlisted to serve until the return of the vessel to the United States, or that he was detained in service after the time of his enlistment. Act of March 2, 1837, (5 Stat., 153, sec. 3;) act of February 20, 1845, (5 Stat., 725;) act of March 3, 1845, (5 Stat., 795.)—*Vol.* 25, *pp.* 44, 45.

1408. An indentured apprentice in the marine corps who, on the expiration of his apprenticeship, enlists in that corps, is not considered as re-enlisting, and is not entitled to any allowance awarded for reenlisting.—*Vol.* 17, *pp.* 203, 207.

1409. Extra pay allowed to officers and men of the marine corps is payable on honorable discharge. Act of September 28, 1850, (9 Stat., 504.)—*Vol.* 16, *pp.* 220, 419.

1410. A boy attached to the band of the marine corps for the purpose of learning music is not entitled to the additional pay granted by act of August 18, 1856, (11 Stat., 118, sec. 5)—*Vol.* 28, *p.* 698.

1411. A marine honorably discharged prior to the expiration of enlistment, and rated master-at-arms or ship's corporal, is entitled to three months' extra pay, under joint resolution of August 10, 1848, (9 Stat., 340, sec. 2)—*Vol.* 16, *p.* 532.

1412. Marines who, having been honorably discharged, re-enlist within one month thereafter, are entitled to two dollars per month in addition to their ordinary pay for the first period of five years, under act of August 4, 1854, (10 Stat., 575,) and to the further sum of one dollar per month for each successive period of five years, notwithstanding the term of enlistment is only four years in the marine corps, per act of 1834. See, also, act of August 3, 1861, (12 Stat., 288.)—*Vol.* 17, *pp.* 468, 469.

1413. Marines who have served in the war with Mexico are not entitled to the three months' additional pay allowed by law, unless they served with the army; and this fact should be made to appear by endorsement on the discharge, or by a certificate from the com-

mander of the corps, or by some other other unquestionable evidence.—*Vol.* 12, *p.* 313.

1414. When a marine re-enlists before the expiration of his former term, the two dollars additional per month, under act of August 4, 1854, (10 Stat., 575,) does not commence until the expiration of his previous term of enlistment.—*Vol.* 17, *p.* 498.

1415. A private marine enlisted three times, served his time each enlistment, and was honorably discharged. He enlisted a fourth time, and was dishonorably discharged; he enlisted a fifth time, and was in the service at the time of the passage of the act of August 4, 1854, (20 Stat., 575, sec. 2.) Held that he is entitled to the two dollars additional pay per month.—*Vol.* 19, *pp.* 137, 138.

1416. Extra pay for enlisted men of the marine corps, performing clerical duty is not allowed unless expressly authorized by the Secretary of the Navy. And since March 3, 1863, no extra pay has been allowed in the military service except at division and department headquarters.—*Vol.* 29, *p.* 92.

NOTE.—Modified by act of July 13, 1866, (14 Stat., 93,) in regard to the army.

XV.—EXTRA DUTY PAY.

1417. The assistance rendered by a sergeant to the officer in charge of clothing at marine barracks does not entitle him to the per diem for extra duty.—*Vol.* 17, *p.* 161.

1418. "Extra duty" men must be mustered as such to entitle them to the per diem.—*Vol.* 17, *pp.* 232, 233, 279, 550; *vol.* 19, *p.* 564.

1419. Cooking for the troops does not entitle a soldier to the per diem for extra duty, that being a part of the regular duty of a soldier of the army and marine corps. Acts of March 2, 1819, (3 Stat., 488;) June 30, 1834, (4 Stat., 713, sec. 5;) August 4, 1854, (10 Stat., 576, sec. 6.) Order of Secretary of the Navy, February 24, 1851.—*Vol.* 19, *p.* 153.

1420. Allowances to non-commissioned officers, musicians, and privates of the marine corps, under the restrictions provided by law, will be governed by the regulations of the army of the United States.—*Vol.* 19, *p.* 153.

1421. A messenger to the commandant and clerks to the paymaster of the marine corps being provided for by law and paid, a soldier of the marine corps cannot be allowed the per diem as on extra duty while acting in either capacity.—*Vol.* 19, *pp.* 308, 309.

1422. The services of a corporal of marines as hospital steward are to be considered fatigue duty, and as coming within the law of March 2, 1819, (3 Stat., 488.)—*Vol.* 9, *p.* 638.

XVI.—OFFICER'S PAY—NAVY.

a.—*Generally ; court-martial.*

1423. When an officer is promoted, and his new commission specifies that it is to take effect from an antecedent date, he is entitled to the pay of the superior grade from such antecedent date of rank, without regard to the nature of the duty performed by him in the intermediate time, or for the fact that he would increase the number of officers of that grade beyond the complement fixed by the Navy Department.—*Vol. 8, p. 233.*

1424. Pay of superintendent of Naval Academy same as on sea service. See act of September 28, 1850, and opinion of Attorney General, November 12, 1866.

1425. The pay of a promoted officer commences on the date when his appointment to the higher rank is signed ; not from the date from which he is entitled to rank. But if his promotion be dependent on passing his first examination after he was entitled, by regulation, to be examined for that purpose, his increased pay will commence on that date. If promoted in consequence of passing his first examination for promotion, the increase begins when he was, by regulation, entitled to be examined.—*Rules of the Accounting Officers, Nos. 90, 91, December 15, 1864.*

1426. Under a rule of the Navy Department of September 23, 1861, the pay of officers promoted commences at the date of commission, irrespective of the date of rank.—*Vol. 30, p. 190.*

1427. Under the laws authorizing them, and especially in view of the acts of June 1, 1860, (12 Stat., 23,) and July 16, 1862, (13 Stat., 586, sec. 17,) it is held that persons holding temporary appointments in the navy, including acting gunners, are entitled to the same pay, including the increase for length of service, as the permanent officers of their grade in the regular navy.—*Vol. 28, p. 608.*

1428. The evidence required to sustain payments to officers of the navy temporarily performing the duty of those of a higher grade previous to the act of June 17, 1844, (5 Stat., 703, sec. 3,) and to acting masters since that time, is a written acting appointment from the Secretary of the Navy ; or, if at sea, from the commanding officer of a squadron or vessel on separate service, except in cases where the officer performing the service is himself the commander of such squadron or vessel.—*Vol. 5, p. 359.*

1429. In case of promotion of assistant engineers and of all other officers who are required to undergo an examination, their pay in their new grade commences from the date at which their warrants are issued from the department.—*Vol. 19, pp. 240–242.*

1430. An officer is entitled under the act of March 3, 1835, (4 Stat., 756,) and before the repeal of that law by the act of June 17, 1844, (5 Stat., 703,) to the pay of a grade higher than his own only

while actually serving and performing the duties of the higher grade. Act August 18, 1856, (11 Stat., 85.)—*Vol. 19, p. 501.*

1431. A lieutenant (Dahlgren) promoted under act of February 28, 1855, (10 Stat., 616.) to be a commander to fill a vacancy caused by the reserved list, but who, prior thereto, was in the receipt of a specific pay fixed by law for special services, (as in charge of the experiments in gunnery at the navy yard, Washington,) is entitled to a continuance of that pay while he remains on that special duty.—*Vol. 19, p. 66.*

1432. A greater number of officers on board a vessel of war than the complement of such vessel, cannot be paid — *Vol. 6, p. 429.*

1433. Continuous service is necessary to entitle an officer to the increase of pay depending on length of service. See *Opinions Attorneys General*, vol. 2, pp. 273, 274.—*Vol. 19, p. 504.*

1434. The officers of the Naval Academy, including the midshipmen and acting midshipmen, are not entitled to any increase of their compensation while embarked for purposes of instruction on board the practice ship.—*Vol. 28, p. 24.*

1435. Professors of mathematics, secretaries of commodores, and captains' clerks, are to be considered on the same footing with other officers of the navy in regard to the commencement of their pay.—*Vol. 7, p. 160.*

1436. The one year's pay allowed to officers of the navy dropped from the service, act of February 28, 1855, (10 Stat., 616,) is a gratuity to the officers themselves, not transmissible to heirs or legal representatives. See act of January 16, 1857, (11, Stat., 153, sec. 1;) see also decision Secretary of Navy August 8, 1857.—*Vol. 20, p. 280; vol. 27, p. 190.*

1437. When a naval engineer was paid without furnishing evidence of his account from the pay-rolls, and he alleged as the cause his removal from Pensacola in consequence of its occupation by rebel troops, and inability to procure a copy of his account, held that his certificate of honor that he has not been paid, &c., has not been relieved from duty, nor been absent during the time charged, except, &c., will be required before settlement at the treasury.—*Vol. 22, p. 532.*

1438. An engineer of the navy absent at the time of the regular examination, and failing to pass his first examination, claims pay as chief engineer from a date prior to his final examination. Held, that he is not entitled to pay under the act of July 16, 1862, (12 Stat., 586, sec. 16.)—*Vol. 25, pp. 281, 282.*

NOTE.—This act provides that the officer shall be entitled to the increased rate of pay only when he shall have been found qualified at a subsequent examination.

1439. The wife of a navy officer confined in an asylum for the insane, may receive his salary and give her receipt for the same to the person on whose rolls the officer's name may be borne.—*Vol. 19, p. 329.*

1440. The law authorizing pay for five years' service in the Texas navy applies to commissioned officers only. Act of March 3, 1857, (11 Stat., 248, sec. 12.)—*Vol. 20, p. 217.*

1441. Officers of the navy when suspended from duty merely, under sentence of a court-martial, are entitled to their pay.—*Vol. 6, p. 31.*

1442. An officer promoted while under suspension with forfeiture of pay by sentence of court-martial is thereby restored to service and pay. See opinion of Attorney General, March 18, 1842.—*Vol. 9, p. 213.*

1443. When the President disapproves of the sentence of a court-martial cashiering an officer, and restores him to duty, the proceedings of the court are to be considered cancelled, and the officer is entitled to his pay.—*Vol. 11, p. 481.*

b.—Commander of squadron and lieutenants.

1444. Two ships of war, without regard to size, are sufficient to form a squadron in such a sense as to entitle the officer in the actual command to the pay of a commander of a squadron.—*Vol. 5, p. 98.*

1442. A commodore in command of the Atlantic squadron is not entitled to the pay of his predecessor who was acting rear-admiral, but that of his grade of commodore; the acts of March 3, 1835, (4 Stat., 755,) and 26th August, 1842, (5 Stat., 535,) allowing officers temporarily performing the duties belonging to those of a higher grade the compensation of such grade, while so employed, having been repealed by the act of June 17, 1844. (5 Stat., 699.)—*Vol. 28, pp. 624, 625.*

1446. An officer's pay, as commander-in-chief of a squadron, commences whenever he has more than one vessel assigned to him under his immediate command as commander of the squadron, or when he reaches the station and assumes the command to which he is assigned.—*Vol. 19, pp. 240–242.*

1447. The term "lieutenants commanding," as used in the act of March 3, 1835, (4 Stat., 755,) applies exclusively to lieutenants in command of vessels, and not to such as have command of bodies of men on shore.—*Vol. 8, p. 150.*

1448. Lieutenants of the navy, commanding the United States mail steamships, will be allowed the pay of lieutenants commanding; and passed midshipmen, serving as watch officers in said ships, the pay of passed midshipmen on duty.—*Vol. 15, p. 42.*

1449. Lieutenants commanding larger vessels than their appropriate command, by the complement table, are entitled to pay as lieutenants commanding.—*Vol. 15, p. 80.*

1450. A lieutenant of the navy was ordered to the command of a vessel, and claimed pay as lieutenant commanding while so engaged; held that the address of official letters by clerks of the department is not a recognition of rank, and that as the Navy Department has

refused to recognize him as lieutenant commanding, the claim cannot be allowed.—*Vol. 30, p. 575.*

c.—Midshipmen.

1451. Passed midshipmen, performing the duty of masters under the orders of the Secretary of the Navy, are not considered as forming a part of the limited number of 180 who are allowed by law to receive passed midshipmen's pay.—*Vol. 11, p. 307.*

1452. A passed midshipman, while doing the duty of a master under orders of the Secretary of the Navy, is entitled to the pay of a master.—*Vol. 11, p. 310.*

1453. A passed midshipman, appointed acting master of a ship by his commander, and his appointment approved by the Secretary of the Navy, is entitled to the continuance of his pay, as such, when transferred and doing duty in that capacity or a higher one on board a prize vessel.—*Vol. 14, p. 240; vol. 14, p. 439.*

1454. Midshipmen attending boards of examination for promotion are entitled to duty pay while in attendance upon the board, whether they pass examination and are promoted or not.—*Vol. 5, p. 325.*

1455. The limitation created by the 4th section of the act of March 3, 1845, (5 Stat., 794,) as to the number of officers who should receive the pay of passed midshipmen, operated as a repeal of so much of the act of March 3, 1835, (4 Stat., 755,) as was inconsistent with it.—*Vol. 15, p. 356.*

1456. The 16th section of the naval appropriation bill of August 3, 1848, (9 Stat., 273,) suspending the operation of that limitation from the date of the last-mentioned act until the classes of 1841 and 1842 had been examined, has no retrospective effect.—*Vol. 15, p. 356.*

1457. All passed midshipmen were, therefore, entitled to the pay of that grade from the passage of the act of August 3, 1848, (9 Stat., 266,) until the examinations took place; and those only who, after that period, came within the limited number of 180, from the date of their rank, could thenceforth receive it.—*Vol. 15, p. 356.*

d.—Increase of pay and gratuity.

1458. An officer summoned or ordered to attend as a witness before one of the courts of inquiry now in session in this city, (Washington,) is not entitled to increased compensation.—*Vol. 27, p. 191.*

1459. General Orders No. 75 of the Navy Department, of May 23, 1866, authorizes payment of one-third additional to the regular pay of all naval officers, whether employed or not, with the exceptions named in the order; first, "officers provided with quarters on shore stations" receive 20 per cent. only in addition to their regular pay; second, midshipmen and mates are excluded from any addition.

See act of April 17, 1866, (14 Stat., 38, sec. 4.)—*Vol. 29, pp. 197, 198.*

1460. Clerks to commanding officers and paymasters are considered as officers for the purposes of this order.—*Vol. 29, p. 207.*

1461. And when an officer is detached by the commander of a squadron, and granted permission to proceed to his residence to await the action of the Navy Department, and subsequently a leave of absence is granted, it was held, in a claim for pay during such leave that, as the officer was detached by competent authority, such action does not change his status. He is still an officer of the government; that the time granted by the department is to be considered additional to that granted by the commander of the squadron; the whole to be the "gratuity" allowed the officer, which must cease when the time granted shall have expired.—*Vol. 28, p. 690.*

1461a. It was also held that when the final discharge shall have been issued and received prior to the expiration of his leave, the pay ceases at the time the final discharge is received, otherwise at the expiration of the leave of absence.—*Vol. 28, p. 690.*

1462. Gratuity to volunteer officers of the navy, under the name of "leave pay for three months," for faithful service rendered the government, is granted entirely at the option of the Secretary of the Navy, and not under any act of Congress. Leave is given for a certain time, at the expiration of which the officer is to consider himself discharged from the service.—*Vol. 29, p. 460.*

1463. In such cases the rule is that when the "temporary appointments" of acting officers have been renewed by revocations of their discharges, or of the acceptance of their resignations, or where such officers have been detached, and at the same time a leave of absence granted, the officer so reappointed or detached should receive only the pay accruing during the leave of absence, even should he be on actual duty a portion or the whole of the time thus given him.—*Vol. 29, p. 460.*

NOTE.—Modified, at the suggestion of the Navy Department, so that time on duty is not deducted from his time of leave.

1464. The resignation of an officer in the navy was accepted, but subsequently revoked by the Navy Department, and leave of absence of three months granted from receipt of the order. Before the expiration of the leave thus granted he was discharged by the Navy Department. In a claim for pay during the three months' leave it was held that at the time the officer was replaced in the service he was fully out of the service with no further claim upon the government; but that this replacement being for the purpose of granting him the "gratuity" allowed by the Secretary of the Navy to correspond with that allowed officers of the army by the 4th section of the act of March 3, 1865, (13 Stat., 497,) it is to cease whenever the Secretary may order, and a final discharge thus issued must be considered a new order, changing the amount of "gratuity." Pay must, therefore, cease whenever the officer receives such final discharge.—*Vol. 28, p. 690.*

XVII.—WHEN AT SEA.

1465. An officer is entitled to sea-duty pay only while in the performance of that duty, and is entitled to leave of absence pay from date of tendering resignation to date of receiving through the mail notice of its acceptance.—*Vol. 24, pp. 523, 524, 536.*

1466. An officer detached from sea service on account of ill health is not entitled to sea-pay and rations. Act of June 1, 1860, (12 Stat., 27.)—*Vol. 25, pp. 109, 110.*

1467. A surgeon's certificate does not decide the question of disability for sea service, under the act of August 11, 1848, (9 Stat., 282,) which is only established by the decision of the Secretary of the Navy.—*Vol. 18, pp. 158-161.*

1468. When sea-pay is claimed by an officer, while proceeding from a vessel to a hospital, and for the time while there, for treatment on account of ill health, the question to be decided in the adjustment of the claim is, when was he detached from the vessel to which he was ordered?—the law of June 1, 1860, sec. 3, (12 Stat., 27,) defining sea-pay to be such as shall be performed at sea under orders of a department, having been interpreted by the Secretary of the Navy to be continued until the detachment from the vessel to which he was ordered. Secretary of Navy, March 1, 1862.—*Vol. 25, pp. 154, 155.*

1469. A navy officer invalided and sent home from abroad, was held not to be entitled to duty-pay for bearing despatches, he having been intrusted with despatches merely because he happened to be coming home, and not sent home to bear despatches.—*Vol. 19, pp. 39, 40.*

1470. It has been the uniform practice to consider officers who return from a foreign station by permission in consequence of sickness, and who do not return to their vessels, as passengers merely, and as not entitled to duty-pay on their passage home.—*Vol. 11, p. 477.*

1471. An officer of the navy detached from service on account of ill health is entitled to ordinary duty-pay only, and not sea-duty pay. His pay will be computed up to the time his resignation is accepted. Act of June 1, 1840, (12 Stat., 27, sec. 3.)—*Vol. 24, pp. 329, 330.*

1472. Officers reporting for duty on a future day designated in an order, may be allowed a reasonable time for performing the necessary travel, and while so travelling shall be regarded as on duty.—*Vol. 6, p. 135.*

1473. When an officer shall be proceeding to a station or returning from one, under orders not given at his own request or for his convenience or accommodation, he is to be considered on duty, and entitled to pay from his domicil or station, provided there shall be no unnecessary delay on his part.—*Vol. 6, p. 140.*

1474. Preparatory orders are given for the convenience of the officer, and do not put him on duty-pay.—*Vol. 11, p. 122.*

1475. Officers are entitled to full pay when proceeding under orders, to join a ship or station, from the time when they leave their domicile in obedience to such order, unless it be expressed in the order itself that they are not to receive such pay.—*Vol. 6, p. 137.*

1476. An officer attending on prize cases in which he is himself concerned, after the delivery over to the marshal of the prize vessels, is not to be considered on duty, unless he is acting under the special order of the department.—*Vol. 12, p. 479.*

1477. The distribution of prize money does not entitle an officer to duty pay.—*Vol. 12, p. 460.*

1478. Officers and men of the navy captured while on sea-duty are entitled to sea-pay and rations while prisoners of war. See act of July 17, 1862, sec. 15, (12 Stat., 609.)—*Vol. 25, pp. 305, 306.*

1479. Under the act of April 23, 1800, sec. 3, (2 Stat., 52,) the officers of the United States vessels wrecked, lost, or destroyed, retain their command and authority over their crews, and are entitled to the same pay as on board ship.—*Vol. 9, p. 443.*

1480. Receiving vessels are not to be regarded as vessels in commission for sea service, and consequently the officers are not entitled to sea-pay, nor to the ration allowed to officers on sea-duty.—*Vol. 10, p. 140.*

1481. A naval officer is entitled to sea-pay while temporarily absent from his ship in attendance as a witness before a civil court.—*Lieutenant G. F. Sinclair's case, October 28, 1844. Vol. 10, p. 407.*

1482. An officer on duty ordered to attend his own trial before a court-martial, and who is honorably acquitted, is allowed duty-pay.—*Vol. 10, p. 28.*

1483. Chiefs or parties ordered to command coast survey vessels will be allowed sea-pay from the time of going on board, or from the date at which the vessels may be placed under their supervision to be prepared for sea service. Regulations of the Navy Department, April 29, 1853.—*Vol. 17, p. 48.*

1484. A lieutenant, as acting paymaster of a storeship, claimed for himself, as commander of the ship, "sea-pay" on the ground of being attached to a vessel in commission for sea service. He was allowed "other duty" pay only.—*Vol. 27, p. 140.*

NOTE.—The Secretary of the Navy concurred in the foregoing decision. See letter of October 20, 1864.

XVIII.—ON LEAVE OR WAITING ORDERS.

1485. An officer, by receiving an order to attend his own trial before a court-martial is not thereby raised from "leave" pay to "duty" pay.—*Vol. 9, p. 103.*

1486. Officers "off duty" ordered to attend a court-martial as members or witnesses, are, by the order, if complied with, put upon duty-pay as provided by the act of March 3, 1835.—*Vol. 5, p. 87.*

1487. Officers of the navy who are suspended from duty by sentence of court-martial, are to receive "leave of absence pay," unless it is otherwise determined by the court.—*Vol. 6, p. 42.*

1488. An officer on temporary "leave of absence" must return to his command without expense to the United States, even though he may be ordered to return before the expiration of his leave.—*Vol. 18, pp. 324.*

XIX.—ON RETIRED LIST.

1489. The Secretary of the Navy decided, August 8, 1857, that the legal representatives of dropped officers who died prior to the act of January 16, 1857, (11 Stat., 153,) should be paid the gratuity of one year's pay under the third section of that act; but from this opinion the Comptroller dissented on the ground that the heirs of an officer dying out of service within the year would receive more than if he had remained in service and on duty.—*Vol. 27, p. 190.*

XX.—PETTY OFFICERS AND SEAMEN.

1490. A boatswain's mate illegally disrated and compelled to perform the duty of a seaman, is entitled to the pay of boatswain's mate. See acts March 2, 1799, and April 23, 1800.—*Vol. 9, p. 503.*

1491. A man enlisting as fireman on board a steamer and illegally disrated, is entitled to his pay as fireman.—*Vol. 13, p. 181.*

1492. Under the law of March 2, 1837, (5 Stat., 153,) a detained or re-enlisted seaman is entitled to an addition of one-fourth of the pay of the respective grades he may hold during his detention or re-enlistment. See, also, the act of July 17, 1862, (12 Stat., 610, sec. 17.)—*Vol. 28, p. 24.*

1493. A yeoman on board a first-class steamer is entitled to the same pay as if serving as such on board a first-class sloop-of-war.—*Vol. 11, p. 123.*

1494. A seaman whose term of service expires while he is a petty officer, and who re-enlists under the act of March 2, 1837, (5 Stat., 153,) will be entitled to an addition of one-fourth to his pay as such petty officer, from the commencement of his new term until his discharge in the United States, unless he shall have been disrated in the mean time by proper authority.—*Vol. 8, p. 150.*

1495. When a seaman leaves his ship after the expiration of his term of service, his detention not having been reported to the department as required by law, he may claim the amount due him at the time of his leaving the ship.—*Vol. 9, p. 335.*

1496. A man on the sick-list in hospital, not in a condition to be

discharged, is not entitled to pay after the term of his service has expired.—*Vol. 12, p. 80.*

1497. The Secretary of the Navy authorized the balance due an insane seaman to be applied to the expenses of his subsistence while in hospital, and accounts have been sanctioned by the accounting officers in conformity therewith.—*Vol. 27, p. 144.*

1498. Apprentices in the navy are to be paid according to the table of complements.—*Vol. 9, p. 562.*

1499. Apprentices in the navy discharged by writ of *habeas corpus* are entitled to their arrears of pay.—*Vol. 9, p. 277.*

1500. Acting masters' mates are not commissioned or warrant officers, and are therefore entitled only to twenty-five dollars per month extra pay in the Pacific squadron, and not to two dollars per day.—*Vol. 17, p. 91.*

1501. Acting masters' mates are not entitled to the \$450 per annum provided for by the act of March 3, 1835.—*Vol. 28, p. 24.*

1502. A seaman transferred to a merchant vessel in distress and paid thereon, is not entitled to be paid by the United States for the same period, they having lost his services.—*Vol. 16, p. 54.*

1503. The father of a minor seaman (living,) is not entitled to claim his son's arrearages of pay or extra pay.—*Vol. 16, pp. 466, 467.*

1504. An apprentice as yeoman, master-at-arms, &c. is not entitled to the three months' pay allowed to a seaman, ordinary seaman, landsman, or boy who shall re-enlist within three months after his discharge. Act of March 2, 1855, (10 Stat., 627, sec. 2.)—*Vol. 25, pp. 645, 700, 701.*

1505. Payment to the master cannot be made for services of his slave as a seaman in the navy of the United States. See Recruiting Regulations of the Navy, article 5, July 1, 1839; instruction Secretary of Navy, September 10, 1839.—*Vol. 22, p. 216*

PAYMASTER.

I. OF THE ARMY.

II. OF THE NAVY.

I.—OF THE ARMY.

1506. No credit will be allowed to paymasters for payments to third or fourth lieutenants, regimental paymasters, and other supernumerary officers. Act of May 8, 1792, (1 Stat., 272.)—*Vol. 24, p. 97.*

1507 An amount paid as monthly pay, &c., by a paymaster, to a

man fraudulently representing himself to be a volunteer officer, there being no such officer, cannot be allowed.—*Vol. 16, p. 168.*

1508. The general rule to be observed by disbursing officers, when application is made by discharged soldiers for their pay, is not to infer as due items not claimed by them or their agents.—*Vol. 29, p. 225.*

1509. Under the act of May 16, 1812, (2 Stat., 735,) district paymasters were entitled to the pay and emoluments of a major of infantry only.—*Vol. 11, p. 167.*

1510. In the revision of paymasters' accounts, the law and the general orders are applied. If there be special orders, taking any case out of the general rule, and those special orders do not appear on the vouchers accompanying the account, this office can have no knowledge of their existence, and must pass the account on the facts as they appear by the vouchers.—*Vol. 25, p. 298.*

1511. Paymasters shall be allowed, in the settlement of their accounts, the part payments (\$25 of the \$100) of bounties, under the act of July 22, 1861, (12 Stat., 270, sec. 5,) advanced to soldiers at their last enlistment, who were subsequently discharged before serving two years; but the surgeon's certificate should state that the discharge was for disability on account of wounds received, or sickness contracted in service since such last enlistment, or the amount of the advance must be deducted from the soldier's pay. Act March 3, 1863, (12 Stat., 743, sec. 6.)—*Vol. 25, p. 146.*

1512. In the revision of the accounts of a paymaster, the pay of the privates of a company was suspended against him, the signatures and marks on the pay roll appearing to have been made by one handwriting, and no evidence having been furnished that the men received their pay. The Army Regulations, and the rules of the accounting officers, require the signature of the party who receives payment, or his mark attested by a commissioned officer if present. But because suspensions of this kind have been made, the paymaster is not authorized to withhold subsequent payment until the suspension be removed.—*Vol. 25, pp. 16, 17. DELINQUENT OFFICERS, 658.*

1513. A paymaster who erroneously overpays a soldier and is reimbursing himself from the subsequent earnings of the soldier by monthly stoppages, must lose the unrecovered amount of the overpayment if the soldier deserts, for then all sums due the deserter are forfeited to the United States, and cannot be applied to the benefit of the paymaster.—*Vol. 19, p. 45.*

1514. For an over-payment to a soldier who subsequently deserts, a paymaster cannot be reimbursed from the amount due at the time of such desertion; the Army Regulations, paragraph 1183, (edition 1857,) providing that every deserter shall forfeit all pay and allowances due at the time of desertion, but paragraph 1185 excepts the amount due laundress, which is to be noted on the rolls; and the act of March 3, 1851, (9 Stat., 595,) providing that all forfeitures on account of desertion shall go to the fund for the Military Asylum.

NOTE.—The Secretary of War overruled the decision of the Comptroller in this case, but this officer holds the contrary to be the law for its action in such questions.—*Vol. 21, pp. 373, 374, 423.*

1515. Government is not liable for frauds committed on disbursing officers. A payment made by paymaster, on a treasury certificate with a forged indorsement, cannot be allowed nor can a duplicate issue.—*Vol. 16, p. 290. RECEIPTS, 1908.*

1516 When double payment is made by the same paymaster to an officer, the error will be charged to the paymaster. But when made by different paymasters it will be charged to the officer, provided the paymaster used due vigilance. And the Treasury can hold both paymaster and officer equally accountable; and if the officer is still in the service the paymaster will be protected by a stoppage of pay, but if the officer be out of service and the government has no better hold on him than the paymaster, then he cannot be relieved unless the payment be on a certificate which he is bound to respect and receive, and which is false in fact, or on the order of his superior officer.—*Vol. 23, pp. 513-519.*

1517. C, a soldier, signs a receipt in blank to B, a paymaster, witnessed by an officer of his regiment. The soldier was subsequently paid by E, another paymaster; afterwards D presents the claim of C and demands payment, which E declines on the ground that, though his payment to C may have been on forged certificates of discharge, he would not have paid on the certificates presented by D, because the assignment was void. Held that E, under the rule, justly refused payment.—*Vol. 21, pp. 520, 521. EVIDENCE, 814.*

1518. An overpayment to a discharged soldier, discoverable on face of the certificate, is chargeable to the disbursing officers who made the payment.—*Vol. 20, p. 464. TRAVEL PAY, I, 2084.*

II.—OF THE NAVY.

1519. Sixty days' duty-pay only is allowed a purser of two or more vessels at the same time for settling his accounts, and not sixty days for each vessel. A purser of a storeship is to be paid as "on duty at other places," under the law of August 26, 1842, (5 Stat., 535, sec. 3).—*Vol. 14, p. 398. ACCOUNTS, 10.*

NOTE.—The sixty days' duty-pay allowed to pursers for settling their accounts commences from the date of paying off the crew. (Secretary of Navy to Comptroller, April 3, 1854.)

But by the order of the Secretary of the Navy, of February 12, 1864, the time allowed for settling the accounts is as follows:

Vessels of the first rate, sixty days; of the second rate, 50 days; of third rate, 40 days; and other rates, 30.

The Secretary of the Navy allows, in addition, as follows: Fleet paymasters, and clerks in all cases, 30 days; paymasters navy yards

at New York and Boston, 60 days; paymasters navy yards at Portsmouth, Philadelphia, Washington, and Mare Island, 40 days; paymasters at other yards and stations, 30 days; inspectors at New York and Boston, 40 days; inspectors at other stations, 30 days; paymasters receiving ships at New York and Boston, 60 days; paymasters, receiving ships at other points, 40 days.

1520. Paymasters in the navy making monthly summary statements of balances to Fourth Auditor within ten days after the end of each month, shall be allowed to send their accounts for settlement quarterly, within one month after the end of each quarter. The rule applies to those on foreign stations and blockade, unless evidence be furnished that the service prevented.—*Vol. 24, pp. 379, 380.*

1521. The 60 days' duty-pay of pursers, (now paymasters,) after detachment, shall be computed from day of paying off, or transfer of bulk of the crew.—*Vol. 22, p. 211.*

1522. The act of March 30, 1812, (2 Stat., 699,) provides that "no person shall act in the character of purser who shall not have been first nominated and appointed by the President and Senate." While this law remains in force no naval officer can be allowed the pay and emoluments of purser, nor any additional compensation, while acting as such in obedience to the command of his superior officer.—*Vol. 15, p. 90.*

1523. An officer of the navy acting as purser by order of his commanding officer will be allowed his travelling expenses, and will be regarded as travelling under orders when making journeys necessary to the performance of his duties as purser, or the settlement of his accounts.—*Vol. 10, p. 362.*

1524. A navy agent who is also a purser is not entitled to a commission upon money transferred from his account in one capacity to that in the other.—*Vol. 11, p. 163.*

1525. An acting purser holding no other office is not entitled to a commission of two and a half per cent. on his disbursements, he being entitled to no more than the compensation allowed by law to pursers.—*Vol. 8, p. 197.*

1526. When an officer of the navy is acting purser, the term of 60 days to settle the accounts for which he is to be allowed duty-pay is not to commence until he is released from duty and placed on leave of absence, no matter how remote that date may be from the date at which he transferred the duty of purser.—*Vol. 12, p. 262.*

1527. The regulations of the Navy Department, of April 1, 1833, providing that "acting pursers who held no other naval office at the same time" should receive a commission on their disbursements, was decided by the United States district court for the Maryland district, April term 1840, to be contrary to law, and is therefore inoperative and void.—*Vol. 8, p. 221.*

1528. A purser in the navy may be allowed, in the settlement of his accounts, for slop clothing and small stores furnished by order of the

commander of the vessel, to a seaman in debt to the United States, who dies or deserts before the amount can be liquidated by a deduction from his pay, provided the order of the commanding officer specifies the articles to be furnished, and states that they are essential to the health and comfort of the seaman. No such order, however, can sanction an advance of money to a seaman in debt.—*Vol. 9, p. 128.*

1529. A purser (now paymaster) may claim credit, &c., for clothing and small-stores turned over to himself, under his new bond, when a transfer to another officer was impossible.—*Vol. 19, pp. 125, 126.*

1530. Where all the rolls, books, and papers pertaining to the accounts of the officers and men have been sunk with the ship, Congress usually, by special enactment, directs the mode of settlement by the accounting officers. The law of March 3, 1847, (9 Stat., 173, sec. 6,) in cases of loss or capture, allows a credit to the paymaster of public stores and property lost with which he is charged on the Fourth Auditor's books.—*Vol. 25, pp. 125, 126.*

NOTE.—Under the act of July 4, 1864, (13 Stat., 389,) the accounting officers, under the direction of the Secretary of the Treasury, in cases like the above, are authorized to fix a day when the wreck, destruction, or loss shall be deemed and taken to have occurred; and also to assume the last quarterly return of the paymaster as the basis for the computation of the subsequent credits to those on board, to the date of the loss, there being no official evidence to the contrary. And the compensation in case of loss of personal effects is not to exceed sixty dollars to each person.

1531. In the case of the *Hatteras*, sunk in naval battle, the paymaster presents his accounts for adjustment based upon the last official and authenticated returns of officers' accounts to date of loss, with accompanying certificates of honor as to amounts in the meantime received by them. Held, that although this practice has long prevailed in the army, Congress had, by special legislation, provided relief in like cases. See act of July 24, 1861, (12 Stat., 273,) "Congress" and "Cumberland." Act of April 2, 1862, (12 Stat., 375,) "Varuna." Resolution, July 11, 1862, (12 Stat., 622.) Act of July 4, 1864, (13 Stat., 389.)—*Vol. 25, pp. 163, 164.*

1532. Pursers attached to war steamers are paid according to the rating of the steamers by the Navy Department.—*Vol. 11, p. 101.*

1533. Overpayments, other than such as are produced by authorized advances, will be invariably disallowed, whether made in money, slops, or stores, except such advances in slop clothing as may be made to seamen by the special written order of the commander of the vessel, and then only on the production of such order.—*Vol. 5, p. 527.*

1534. A purser in the navy is not entitled to double pay for doing duty at a yard and on board a receiving ship at the same time.—*Vol. 10, p. 162.*

1535. When a purser loses on one class of stores and gains on

another, the excess realized in the one case may be applied to a *bona fide* deficiency in the other.—*Vol. 12, p. 64.*

1536. Whenever a navy agent shall be authorized to make advances to officers bound on a cruise, it is the duty of the purser of the vessel to furnish such agent, for his guide, a correct list, signed by himself and approved by the commanding officer, of all the officers entitled to an advance of pay; which list must exhibit their names, rank, and monthly pay.—*Circular from Navy Department, October 5, 1843.*

1537. No commission exceeding one per cent. is allowed to consuls who negotiate bills of exchange. It is the duty of pursers to negotiate bills, except when it is absolutely necessary to employ another agent.—*Vol. 12, p. 200.*

1538. When the clothes of a seaman are thrown overboard to prevent infection, they are to be paid for by the government.—*Vol. 9, p. 338.*

NOTE.—See laws of July 4, 1864, (13 Stat., 389,) and April 6, 1866, (14 Stat., 14,) as to clothes lost, &c.

1539. No allowance is made for the expenses of the maintenance of a minister of the United States while on his passage in a ship of war. The expense is to be defrayed by the minister himself.—*Vol. 11, p. 224.*

1540. Where a purser, holding the appointment of navy agent, transfers a sum of money from himself as navy agent to himself as purser, the percentage allowed by law on disbursements is not chargeable upon the amount transferred until evidence of the proper disbursement of the amount is furnished.—*Vol. 11, p. 163.*

1541. A purser may receive credit for a disbursement for services or supplies not authorized by law or regulation, when such disbursements shall be made on public account by order of the commanding officer, who shall be held accountable. Resolution March 3, 1849, (9 Stat., 419,) sec. 2; act January 31, 1823, (3 Stat., 723,) sec. 1; act August 26, 1842, (5 Stat., 536,) sec. 6.—*Vol. 18, p. 93.*

1542. To entitle an officer to credit for an expenditure of money or property, by order of his commanding officer, such expenditure must be on public account and for the public service. See joint resolution March 3, 1849, (9 Stat., 419, sec. 2;) paragraph 1007 Army Regulations; circular Secretary of the Navy, March 20, 1855.—*Vol. 25, p. 231, 232.*

1543. A purser will not be allowed for advances or loans to officers, even though made by order of the commanding officer.—*Vol. 18, p. 93.*

1544. To indemnify pursers (now paymasters) for unavoidable losses on clothing and small stores, they may be allowed a commission on actual issues thereof, not to exceed one and a half per cent. on issues of clothing, and not more than two per cent. on issues of small stores. Decision Secretary of Navy to Fourth Auditor, July 15, 1846 — *Vol. 27, p. 203.*

1545. To protect the government from loss, 10 per cent. is added to the cost of all clothing and small stores issued. If the disbursing officer omits to make the addition, he will be held responsible.—*Vol. 27, p. 203.*

1546. Paymasters are forbidden by the act of August 26, 1842, (5 Stat., 536, sec. 6,) to make advances under any circumstances. The navy agents may be directed to do so by the Navy Department. See act January 31, 1823, section 1, (3 Stat., 723.)—*Vol. 27, p. 203.*

PENSIONS.

I. JURISDICTION.

II. WHO ARE ENTITLED TO RECEIVE.

- a.—*General principles and cases.*
- b.—*Invalid pensioners.*
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III. EXECUTORS AND ADMINISTRATORS.

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VI. BIENNIAL EXAMINATION.

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IX. NOTARY.

X. INCREASED PENSION.

I.—JURISDICTION.

1547. The Second Comptroller has no authority to decide on the right of persons to be put on the pension rolls, that belongs exclusively to the Commissioner of Pensions and the Interior Department. See acts of July 21, 1848, (9 Stat., 249,) and February 22, 1849, (9 Stat., 347.)—*Vol. 10, p. 353; vol. 14, p. 371.*

1548. The decision of the pension office as to allowance of pensions, and the designation in the pension certificate of heirs, executors, administrators, and guardians, to whom payment should be made, are to be regarded as final by the accounting offices.—*Vol. 15, p. 82.*

1549. The examining surgeon can reduce the pension by reducing the degree of disability, but he cannot, by raising the degree, again increase the pension, the Commissioner of Pensions alone having that power.—*Vol. 29, p. 575.*

1550. After a certificate has been issued by the proper department declaring the right of a person to a pension, the duty of another department commences; which sees that the rights acknowledged and guaranteed by that certificate are protected, and that payments

are made in conformity with its provisions under the law.—*Vol.* 18, *p.* 4.

1551. A pension clerk whose employment is authorized by law, and paid as such, is empowered to act as a magistrate in pension cases. Act of February 19, 1849, (9 Stat., 346, sec. 2.)—*Vol.* 19, *p.* 85, 86.

1552. The decisions of the Interior Department, through the Commissioner of Pensions, are conclusive as to the heirs, executors, administrators, and guardians, when they are so designated in the certificate.—*Vol.* 18, *pp.* 103, 181, 396.

1553. A pensioner must present his account and vouchers to a pension agent for adjustment, and not to the accounting officers, (except when the pension has been unclaimed more than 14 months,) if within the time fixed by law. Act of August 11, 1848, (9 Stat., 283, sec. 1.)—*Vol.* 18, *p.* 152.

1554. When the War Department, (now Interior Department) has given special directions as to the payment of a pension, it is the duty of the pension agents to follow the directions. And if payment be made, not in accordance with such direction, it cannot be admitted at the treasury to the credit of the agent. Act of February 22, 1849, (9 Stat., 347.)—*Vol.* 11, *p.* 403.

1555. After a pension has been granted, the accounting officers judge of the sufficiency of the vouchers on which payments may be made.—*Vol.* 18, *p.* 4.

II.—WHO ARE ENTITLED TO RECEIVE.

a.—*General principles and cases.*

1556. The heirs of a person to whom pension is granted, dying before his certificate is issued, are entitled to receive the pension up to the date of his death. Acts of February 3, 1853, (10 Stat., 154,) and June 3, 1858, (11 Stat., 309.)—*Vol.* 21, *pp.* 481, 482.

1557. When a pension certificate is issued in favor of two or more minors, and one of the minors dies before the date of the certificate, but after the date of the commencement of the pension, the full amount will be paid to the survivor on proof of the death of the other party.—*Vol.* 26, *p.* 196.

1558. The laws for the distribution of property in the State of pensioner's domicil govern; but in the distribution of pensions and other gratuities, no distinction is made between the whole and the half blood, although the degree of kindred be computed according to the civil law in that State, by which the father and mother, and all other ascendants, exclude all the collaterals from the succession, except brothers and sisters of the whole blood.—*Vol.* 26, *p.* 294. DOMICIL, 777.

1559. Pensions are not granted to the parents of officers or seamen lost in the naval service, except by special enactment. See acts of July 27, 1854, (10 Stat., 799;) August 14, 1848, (9 Stat., 331;) Feb-

ruary 3, 1853, (10 Stat., 748,) and June 15, 1844, (5 Stat., 665.)—*Vol. 19, pp. 488, 489.*

1560. The act of July 14, 1862, (12 Stat., 567, sec. 3,) provides for the payment of pensions to the mother of decedent in certain cases. Also to dependent sisters. Act of June 6, 1866, section 12, provides also for dependent fathers and brothers in certain cases.—*Vol. 19, p. 488, 489.*

1561. The amount which an officer, seaman, or marine, who is a pensioner, is entitled to receive, including pay and pension, shall not exceed his lowest duty pay. Acts of June 1, 1860, (12 Stat., 24;) August 3, 1861, (12 Stat., 290, sec. 22;) August 11, 1848, (9 Stat., 283,) and August 16, 1841, (5 Stat., 440, sec. 2.)—*Vol. 24, p. 447.*

1562. Pensions cannot be considered pay in any sense, nor be included in half pay. Decision of Commissioner of Internal Revenue.—*Vol. 24, pp. 467, 468.*

1563. When a pensioner receives from the pension agent a greater sum than was his due, the excess should stand to his debit and be considered as so much paid, and no further payment should be made until something shall become due, after deducting the sum so overpaid.—*Vol. 8, pp. 222, 421.*

1564. Pension will not be paid to residents of a revolted State.—*Vol. 23, p. 139.*

1565. Pensions must be paid to party named in the certificate. In the case of minors, the name of the administrator or guardian is sometimes put in the certificate.—*Vol. 18, p. 181. Post, 1608, 1644.*

1566. The conviction and imprisonment of a petitioner for crime does not disqualify him from taking the usual oath of identity; nor does it deprive him of his right to draw his pension, or to appoint an agent to draw it for him.—*Vol. 15, p. 237.*

1567. When an act of Congress directs the Secretary of War to make payment of a pension to the heirs of a deceased person, and that officer has issued the certificate in conformity to the law, the pension agent cannot pay over the money to any other person than the heirs, as expressly directed in the act.—*Vol. 13, p. 30; vol. 12, p. 376*

1568. No deduction is to be made from the amount of pension due a deceased pensioner, on account of his indebtedness to the United States accrued before the granting of the pension.—*Vol. 6, p. 418.*

b.—*Invalid pensioners.*

1569. An invalid pensioner who has been employed and paid in the army, navy, or marine corps since the date of his last certificate, cannot be entitled to a pension except by virtue of a new certificate from the Pension Office.

And the rule requiring an invalid pensioner to make oath that he has not been so employed or paid applies to all cases, whether one

or more certificates have been issued to the individual.—*Vol. 14, p. 68; vol. 19, pp. 59, 364; vol. 22, pp. 296–298, 318; vol. 25, pp. 345, 346.*

1570. A navy invalid pensioner inscribed on the rolls, under a special act for his relief, is subject to the same restrictions as those enrolled under general laws.—*Vol. 17, pp. 119–121; vol. 18, p. 23.*

1571. B, an invalid soldier, was pensioned for the loss of a leg, by special order permitted to re-enlist as ordnance sergeant, a grade higher than his original enlistment, but, in fact, to perform the duties of clerk. The Commissioner of Pensions allowed the pension, and his decision was held by the Comptroller to be correct, under the act of April 30, 1844, (5 Stat., 656.)—*Vol. 22, pp. 513, 514.*

1572. A pensioner who was in the civil service of the government on the 3d of March, 1865, and who withdraws from such service any time prior to the next succeeding regular pay day, is allowed to retain his pension certificate, the agent making the payment, simply deducting for the time the pensioner was employed in the civil service.—*Vol. 29, p. 28.*

1573. Where a pensioner was contractor for carrying the mail at \$50 per annum, and his full compensation amounted to less than the full pay or salary provided by law of an able-bodied man employed by the government, held that payment of pension under section 1, act of March 3, 1865, (13 Stat., 499,) is not incompatible with payment of the contract price for carrying the mail.—*Vol. 28, p. 718.*

1574. Under the act of March 3, 1865, section 1, (13 Stat., 499,) it is held that when a pensioner employed in the civil service of the government receives the full compensation of an able-bodied employé he forfeits the pension to which he otherwise would be entitled for the time so employed and paid. But when, in consequence of disability, he receives compensation at a lower rate than an able-bodied person in the same nominal capacity, he is entitled to a continuance of his pension. And where a pensioner employed as an able-bodied person has been discharged from the civil service before the regular pay day, (September 4, 1865,) he will not be required to surrender his certificate, but the pension agent will deduct the amount which accrued while he was employed after March 3, 1865.—*Vol. 28, pp. 250, 251, 278, 279, 336, 347.*

NOTE.—The first section of the act of March 3, 1865, forbidding pension when full pay or salary, etc., is received, was repealed by the 5th section of the act of June 6, 1866, (14 Stat., 56.)

c.—Oath of allegiance.

1575. When it is apparent that persons to whom pensions are paid are foreigners and owe no allegiance to this government, the oath of allegiance will not be required.—*Vol. 24, p. 59.*

1576. A pensioner residing in a foreign country, a native and citizen

of that country, is not required to take an oath of allegiance.—*Vol.* 28, *p.* 29.

1577. In those cases of persons pensioned as widows, children, mothers, or other dependent relatives of deceased soldiers or sailors, when it appears from the oath of identity that the claimant never resided in this country, neither the oath of allegiance nor any special explanation of its omission will be required.—*Vol.* 29, *p.* 582.

1578. Invalid pensioners, whether of the army or navy, if not naturalized, or declaration of intention filed, must depose that they owe no allegiance to the United States.—*Vol.* 29, *p.* 583.

d.—*Widows.*

1579. When a pension is granted to continue so long as the pensioner remains a widow, her oath that she continues unmarried is required as a condition precedent to payment.—*Vol.* 22, *p.* 308.

1580. Where a widow, pensioned under the act of July 21, 1848, (9 Stat., 249,) contracts another marriage, the agent must require her pension certificate to be surrendered on paying her pension to the date of such intermarriage. If she has a child entitled to the reversion of the pension, application must be made, with proper proof, to the Commissioner of Pensions, for a new certificate in the name of the child — *Vol.* 13, *p.* 193.

1581. The balance of pension due a deceased pensioner to the time of his decease is payable to the widow only, if she remain unmarried. The children have no legal claim to it, except in case of the death or intermarriage of the widow.—*Vol.* 9, *p.* 26.

1582. Pensions provided for invalids or widows are personal to the parties, and if not recovered by the beneficiaries, or at least adjudicated in their favor during their lifetime, cannot be recovered by their legal representatives.—*Vol.* 28, *p.* 412. *Vide* Opinion of Attorney General of February 14, 1856.—*Vol.* 7, *pp.* 622, 624.

NOTE.—Modified by acts of June 6, 1866, (14 Stat., 57,) sec. 6, and July 25, 1866, sec. 4, (14 Stat., 230,) authorizing payment in such cases to heirs of invalid pensioners, and by sec. 4, act July 27, 1868, granting payment in all cases.

1583. A widow claiming arrears of pension due her deceased husband, must prove herself, before a court of record, to be the widow of the deceased pensioner, and also take the oath that she is the identical person thus proved to be the widow.—*Vol.* 14, *p.* 19.

1584. A court of record is any court having common law jurisdiction, with a seal and a clerk or register, and before such a court the widow of a deceased pensioner can prove her relationship to the decedent — *Vol.* 18, *p.* 39.

1585. A widow pensioner, under the law of July 4, 1836, (5 Stat., 127,) or July 21, 1848, (9 Stat., 249,) is entitled to her pension up to the date of her death or intermarriage, if either occur within the five years for which the pension runs; and for the remainder of the

time, if any, the pension inures to the child or children under 16 years of age.—*Vol. 12, p. 344.*

1586. In the case of a widow who died before the issue of her pension certificate, under the law of July 4, 1864, sec. 10, (13 Stat., 388,) the amount which would have been payable, had the claimant survived until its issue, may be obtained by any dependent relative entitled to receive a pension, by reason of the original claimant's service or death, upon a new certificate issued in the name of such dependent relative.—*Vol. 28, p. 737*

1587. Decedent was a pensioner, having been divorced from her first husband and married to B., who died. A child by her former marriage survived. B. left no children, but a brother and sister, who claimed the pension due at the time of the death of the pensioner; but it was held that the right of the child, as next of kin, to the pension already due, became vested—*Vol. 29, p. 17.*

c.—Children.

1588. On the death of a female pensioner, the balance of pension due at the time of her death is, by law, payable to her children then living.—*Vol. 10, p. 5.*

1589. In the case of a pensioner who had been dropped from the rolls, and subsequently made application for restoration, but died pending the proceedings before the Commissioner of Pensions, leaving a daughter and several grandchildren, children of his deceased son, it was held that, although the statutes granting pensions do not mention grandchildren as beneficiaries entitled to receive such gratuities, the word children, according to the construction of the Supreme Court, includes grandchildren in such cases. See 19 Howard, 358.—*Vol. 31, p. 397.*

1590. The share due each of the surviving children of a pensioner may be paid to his or her attorney without the production of the original certificate, or a compliance with the regulation on page 12 of the circular of September 1, 1846.—*Vol. 13, p. 25.*

1591. When a pensioner, who is a widow, dies, leaving children, the amount of pension due at the time of her death belongs not to the executor or administrator, but to her surviving children at the time of her decease, to be distributed among them in equal shares.—*Vol. 14, p. 38; vol. 11, p. 104.*

1592. The fact that the deceased received a pension as the mother of a deceased soldier does not affect her children's claim to the arrears due on her certificate at the time of her death, although under a decision of the Commissioner of Pensions a pension once received by a mother on account of a deceased son who was a soldier, does not, at her death, revert and continue to a sister of said deceased soldier, even if dependence be shown.—*Vol. 28, p. 310.*

1593. A pensioner under the law of July 14, 1862, (12 Stat., 567, sec. 2,) deceased leaving a minor child and husband. Payment of

the arrears of pension in such a case must be made to the surviving child.—*Vol. 29, p. 544.*

1594. Payment of arrears due a deceased pensioner who left no widow must always be made to surviving children, if any, and not to representatives of children who died during the lifetime of the pensioner.—*Vol. 15, p. 426.*

1595. Children, while the mother is living, not being entitled to the pension, except upon the marriage of their mother, proof of her marriage and its date must be filed with their claim — *Vol. 13, p. 341.*

1596. The amount due a child of a deceased pensioner is payable to the attorney of such child, the receipt of the latter being sufficient, even though a *feme covert*. State laws and the common law cannot regulate the payment of pensions to the child of a deceased parent, though a *feme covert*, because such payment is regulated by United States statutes.—*Vol. 18, p. 98; vol. 11, p. 65.*

1597. Where one of the children named in a pension certificate dies unmarried, before the certificate is received, leaving brothers and sisters, the share of pension due him may be paid to the surviving children without taking out letters of administration.—*Vol. 12, p. 147.*

1598. Where one of two or more children named in a pension certificate, cannot be found, and a certificate from the proper court is offered as a voucher by the attorney of the other children, affirming that satisfactory evidence has been produced of the death of such child, or that he has been so long absent without having been heard from as to be considered legally deceased by the laws of the State where he had lived, it will be considered sufficient proof of the right of the surviving children to draw the balance of the pension due.—*Vol. 12, pp. 134, 146.*

1599. Pensions are payable to the children of the pensioner named in the certificate, if living, and to the legal representatives of such children as may have died.—*Vol. 14, p. 21. Post, 1608, 1609.*

1600. When several children are embraced in the pension certificate, the oath of identity is not required from all, but only from the one who may be authorized by regular power of attorney from the others to receive the pension money due.—*Vol. 12, p. 87.*

1601. Arrears of pension due deceased pensioners are payable to his children. Act of June 19, 1840, (5 Stat., 385.)—*Vol. 18, p. 4.*

1602. In case of Maria P. Marion, a deceased pensioner, it was held that the arrears of pension due her should be paid to the children by her first husband, (provided there were no others living at the time of her death,) although the pension was granted to her as the widow of B. Marion, her second husband.—*Vol. 20, p. 556.*

III.—EXECUTORS AND ADMINISTRATORS.

1603. Pension not being an asset, subject to debts or distribution, according to the *lex loci*, (Opinions of Attorneys General, vol. 4, p.

506,) the only legal right which an administrator has to act, must be given by the laws of Congress.

The statutes prior, as well as subsequent, to the act of July 19, 1840, (5 Stat., 385,) make no provision for the exercise of the powers of an administrator, except when a balance of pension is due the decedent.—*Vol. 31, pp. 29, 30.*

1604. Under the act of June 19, 1840, (5 Stat., 385,) making provisions for the payment of pensions to the executors or administrators of deceased pensioners in certain cases, it was held that the rights of parties already vested under former laws, were not affected, and that the pension laws and regulations, previously in force, were not modified, except in cases of pensioners who shall die "*leaving children.*"

The Secretary of the Treasury concurred in opinion with the Second Comptroller, and payments were made accordingly.—*Vol. 18, p. 4*

1605. By the acts of March 2, 1829, (4 Stat., 350,) and June 19, 1840, (5 Stat., 385,) the balance due a deceased revolutionary pensioner, leaving children but no widow, belongs to the children, and can be paid only to them or to the executor or administrator on the estate of the deceased pensioner for their benefit.—*Vol. 11, pp. 16, 244, 190.*

1606. A grandchild of a deceased pensioner cannot, in any case, claim to receive the arrears of pension due the pensioner at the time of his death. If no widow or children survive the pensioner, payment must be made to the executor or administrator.—*Vol. 14, pp. 44, 344.*

1607. In case a pensioner dies a few days before the date of his pension certificate, the arrears must be paid to the administrator for the sole benefit of the children of the decedent, or it may be paid to one of the children on the written request of all the others.—*Vol. 18, p. 78.*

NOTE.—See Opinions Attorneys General, vol. 7, p. 624, overruling; but the act of July 25, 1866, sec. 4, restores so far as relates to invalid pensioners.

1608. If a pension be made payable to an administrator by the pension certificate, and he be named therein, it is sufficient, provided he has complied with paragraph 6 of Regulations of September 1, 1846.—*Vol. 18, p. 96.*

1609. When an administrator is named as such in the pension certificate, he is to be paid without other proof of his administratorship. *Ante, 1565, 1599.—Vol. 18, pp. 103, 181, 396.*

1610. Where payment was made to the administrator of a pensioner, and his voucher was suspended because the probate court omitted to certify whether there was a widow or not, and afterwards it appeared that there was a widow who petitioned for the appointment of the administrator, and subsequently died leaving no children, the voucher was admitted.—*Vol. 22, p. 442.*

1611. The right vesting in the children at the death of the mother, if one of them *subsequently* dies, his share is payable to his legal representatives.—*Vol. 27, p. 203.*

1612. The term “legal representatives” of a deceased pensioner, as used in the act of March 2, 1829, (4 Stat., 350,) means the executor of the last will and testament of the deceased pensioner, or the administrator on his estate.—*Vol. 10, p. 428.*

1613. Arrears due a deceased pensioner may be paid to the administrator, unless some one or more of the heirs entitled make known to the pension agent a preference that their share should be paid without the intervention of an administrator.—*Vol. 8, pp. 358, 359.*

1614. The pension act of June 19, 1840, (5 Stat., 385,) was not designed to repeal the act of March 2, 1829, (4 Stat., 350,) but it does authorize payment to an administrator, notwithstanding there are children living. Where there are no children living the law does not apply.—*Vol. 13, p. 28.*

1615. The pension act of June 19, 1840, (5 Stat., 385,) provides that the pension shall not be considered as part of the assets of the deceased pensioner's estate, nor liable to be applied to the payment of the debts of said estate; therefore the amount of pension due at the time of the death of a female pensioner may be paid to her children, or to the administrator for the sole and exclusive benefit of her children, to be distributed among them in equal shares.—*Vol. 12, p. 160; vol. 27, p. 53.*

1616. And whenever, from considerations of equity, payment of arrears is authorized to be made to the person who may have incurred the expenses of the last illness and burial of such pensioner, the fact of the claimant's having incurred such expenses is required to be stated in the vouchers.—*Vol. 29, p. 200.*

1617. When the executor or administrator of a deceased pensioner claims payment of the balance of pension due at the time of the death of a pensioner, the certificate of the proper court, to the fact of the death, will be sufficient, without certifying that there are children living.—*Vol. 14, p. 22.*

1618. When a claim for pension has been adjudicated prior to the decease of the applicant, but the certificate was not issued until after his death, and it appeared that payment of the funeral and other expenses had been made by the guardian, payment of the amount of the pension due up to the time of the applicant's decease will be allowed.—*Vol. 29, p. 118.*

1619. In the case of a male pensioner, it should appear by the certificate that there is no widow; as, in case of a widow surviving the deceased pensioner, she, and not the executor or administrator is entitled to the balance.—*Vol. 14, p. 22.*

1620. On the death of a pensioner leaving neither wife nor child, the balance of pension due at the time of his death is not payable to his half-sister, but to the executor or administrator on his estate.—*Vol. 9, p. 637.*

1621. Payment of arrears due on the surrendered certificate of deceased pensioner, is made in consideration of heirship, the order of succession being the only provision of the statute, act July 25, 1866, (14 Stat., 230, sec. 4.) in relation to the parties to whom the payment may be made. It is not necessary to prove dependence on the late applicant.—*Vol. 30, p. 559.*

IV.—GUARDIANS.

1622. When evidence is required of the continuance of guardianship of minor entitled to pension, the certificate of the tribunal granting the letters of guardianship is necessary.—*Vol. 21, p. 552.*

1623. A guardian must prove that his wards were living at the time the pension he claims was due, and must establish their identity and residence by competent testimony; and the clerk of some court of record must certify to the official character of the magistrate before whom such testimony was taken.—*Vol. 18, p. 303.*

1624. On the application of a guardian for the payment of a pension due his wards, he must furnish proof that they are still living, are under 21 years of age, and that he still continues to be their guardian.—*Vol. 8, p. 25.*

1625. Where a guardian's two wards are residing apart, the affidavit of two witnesses at each point that each child is still living, is held to be a compliance with the official requirement, and equally valid with the usual form of the affidavit of two witnesses residing at one point, who both, at one time, make oath that both children are living.—*Vol. 28, p. 748.*

1626. At the death of the ward the powers of the guardian cease. The balance of pension, therefore, due a pensioner who was under guardianship at the time of his decease, is not payable to the guardian.—*Vol. 8, p. 65.*

1627. It is usual to obtain the appointment of a guardian for an insane pensioner, who shall receive the pension as it accrues.—*Vol. 20, pp. 184, 185; vol. 22, p. 385.*

1628. A guardian is not required to file with every voucher, for payment of the pension to which his ward may be entitled, a certificate from the probate court of his power as guardian. To prevent doubt whether or not the letters of appointment have been revoked, the words "Still continues to be his or her lawful guardian," should be added at the end of the deposition of the two witnesses.—*Vol. 28, p. 133. WILLS, 2262.*

V.—WHEN PAID AT THE TREASURY.

1629. A pension remaining due and unclaimed, at an agency, for 14 months, can be paid at the treasury only. Acts of April 6, 1838, (5 Stat., 226, sec. 2;) August 23, 1842, (5 Stat., 521, sec. 3;) Feb-

ruary 3, 1853, (10 Stat., 154, sec. 1.) Regulations of Second Comptroller's office, September 1, 1846; circular, May 26, 1847 — *Vol. 18, p. 64; vol. 20, pp. 157, 204; vol. 25, pp. 99, 288, 289, 541, 542, 582.*

1630. Whenever a navy pensioner has been unclaimed for two years, the application of the pensioner, and all the documents in support of his claim, must be referred to the Fourth Auditor of the treasury for investigation.— *Vol. 8, p. 22.*

1631. Navy pensions unclaimed for 14 months are to be paid only at the treasury, in the same manner as army pensions — *Vol. 19, p. 81.*

1632. If the pension agent is able to certify that the amount of an unpaid pension was claimed previous to the expiration of 14 months from the time when the same became due and payable, it is proper that he should pay the same, although at the time of actual payment the 14 months may have elapsed.— *Vol. 21, p. 343.*

1633. Where an invalid pensioner's name has been continued on the rolls, and for a series of years he has not claimed the pension at the agency by producing the required proof of continued disability, and afterwards produces that proof and claims under the original certificate, payment should be made at the treasury. But if his name was stricken from the rolls of the agency, so that he could not obtain his pension by applying there with the proper proof, and is to receive it by virtue of a new order from the department, he should be paid at the agency.— *Vol. 14, p. 63.*

1634. A certificate of pension having been lost before coming into the possession of the pensioner, a duplicate certificate, issued in consequence of the loss, will be paid at the agency. The limitation of 14 months does not apply in such cases.— *Vol. 21, p. 454.*

1635. A pension, whenever commencing, cannot be considered due and payable at the agency until the regular semi-annual time of payment, next following the date of the certificate placing the name of the pensioner on the roll — *Vol. 18, pp. 235, 236.*

1636. The law requiring pensions remaining unclaimed for a period of 14 months to be returned and settled at the treasury, applies to army pensions only.— *Vol. 18, pp. 255-257.*

NOTE.—Subsequent legislation and the regulations of the treasury, provide for the payment of navy pensions, in similar cases, at the treasury.

VI.—BIENNIAL EXAMINATION.

1637. Where a pensioner has suffered the loss of a limb, finger, toe or eye, or privation of like essential part of the body, (unless it is so clear a case as to admit of no doubt,) the specification thereof in the application will entitle him to an exemption from biennial examination.— *Vol. 25, p. 2.*

1638. Pensioners are required by law to take the oath of allegiance.

Biennial examinations must be made by two surgeons or physicians.* Act of March 3, 1859, (11 Stat., 439.) But it is not necessary where a limb has been lost.—*Vol. 25, p. 328, 329.*

1639. An official oath having been taken by the examining surgeon, appointed by the Commissioner of Pensions, on assuming the position, no subsequent oath is necessary in making the biennial examinations.—*Vol. 25, pp. 222, 223.*

See acts of June 12, 1858, (11 Stat., 336;) August 3, 1861, (12 Stat., 288;) July 11, 1862, (12 Stat., 531;) March 3, 1865, (13 Stat., 491.)

1640. Invalid pensions originally granted or increased by special act of Congress, do not fall within the provisions of the general law requiring biennial examinations. Acts of March 3, 1859, (11 Stat., 439, sec. 2;) and January 8, 1862, (12 Stat., 332.)—*Vol. 23, pp. 413, 416.*

1641. The fees for biennial examination of invalid pensioners must be paid by government. See act of July 14, 1862, (12 Stat., 568, sec. 8.)—*Vol. 25, p. 513.*

VII.—EVIDENCE.

1642. Where pensioner resides abroad, the omission of the consular seal to his certificate may be waived on application for payment of pension, when the other papers are satisfactory.—*Vol. 22, p. 423.*

1643. A pension agent must require that a copy of the certificate be set out in the oath of identity.—*Vol. 13, p. 21.*

1644. The omission of the words "duly authorized by law to administer oaths" from the oath of identity or acknowledgment of the power of attorney in the pension papers, is not so important as to render it necessary to reject the papers on that account.—*Vol. 11, pp. 404, 423, 437.*

1645. The regulations for paying pensions require that the certificate shall be set out in the application, and that the applicant shall make oath that he is the identical person named in that certificate.—*Vol. 13, p. 123.*

1646. In cases where there is no county court seal, the pension agent will not reject vouchers for lack of the seal alone, but he will require the certificate of the clerk that there is no seal.—*Vol. 11, p. 314.*

1647. A pensioner residing in Canada may execute his papers before a justice of the peace in the vicinity of his residence, if he is too feeble to cross over to the United States to have his papers authenticated.—*Vol. 14, p. 125.*

1648. The claims of pensioners residing in Canada [foreign countries] are allowed upon executing the proper papers before an author-

* Examination now required to be made by one only, provided he is a surgeon of the army or navy, or an appointee of the Commissioner of Pensions. [See act of July 4, 1864, (13 Stat., 387.)]

ized magistrate, on the ground of impracticability of crossing the lines for that purpose, or reaching a consul for his certificate.—*Vol.* 28, *p.* 120.

1649. Where a pensioner neither signs nor makes his mark to vouchers requiring his signature, the pension agent is not authorized to pay the money.—*Vol.* 12, *p.* 509.

1650. That section of the pension instructions which requires a witness to pension vouchers, where the pensioner or attorney of a pensioner subscribes by a mark in consequence of inability to write, applies to the oath of identity as well as to every other necessary voucher. In all cases, therefore, a witness is required, other than, and in addition to the magistrate before whom the affidavit is made. Acts of March 3, 1819, (3 Stat., 514;) June 7, 1832, (4 Stat., 529;) and June 19, 1840, (5 Stat., 385.)—*Vol.* 12, *p.* 85.

1651. Only one witness, besides the magistrate before whom pension papers are acknowledged and sworn to, is required by the forms and instructions of 1846.—*Vol.* 19, *p.* 180.

1652. In the case of a pensioner under guardianship before payment of a pension due, the evidence of two witnesses must be had under oath that the pensioner was living at the specified date of the oath of identity required of the guardian.—*Vol.* 18, *p.* 444.

1653. When a pension agent is able to certify, of his own personal knowledge, that a pensioner under guardianship is living, he may waive the evidence to that effect required by the circular of September 10, 1855.—*Vol.* 19, *p.* 240.

1654. The affidavit of the pensioner living in Spain, being dated prior to the date to which the pension is claimed; Held that the regulations requiring affidavit and power of attorney to be dated on or subsequent to the day pension is due, may be waived.—*Vol.* 22, *pp.* 425, 426.

1655. In the case of a pensioner living in Ireland, the physicians omitted to swear to their examination, and the informality was waived.—*Vol.* 22, *p.* 449.

1656. The affidavit of pensioner's identity must be made before a magistrate, and when he has changed his residence the previous one must be given.—*Vol.* 22, *p.* 457.

1657. The enlistment of a pensioner is sufficient evidence of the termination of disability, and he cannot be continued on the pension list without a new certificate.—*Vol.* 20, *pp.* 165, 166.

1658. Payment of pension to heirs will not be ordered when the original certificate is not produced and surrendered, nor proper evidence given of loss and inability to produce it.—*Vol.* 22, *p.* 533.

1659. When pension had been unclaimed a long time, held that before the claim for arrears can be allowed the applicant must file an authenticated affidavit signed by himself with his name written out at length that he has not been employed or paid in the army, navy, or marine corps during the period for which he claims arrears.

And he must also make a statement under oath setting forth the nature of the disability for which a pension was granted him; by what accident, and how, when, and where it occurred; if on ship-board, the name of the ship, the port she was in, or the port from and to which she was sailing, and the name of the commander.—*Vol. 18, p. 3.*

1660. Where it appeared by the original pension certificate that a semi-annual examination was required; that the time which elapsed between the date on which the pension certificate was issued and the day when, by the act of March 3, 1865, (13 Stat., 499,) the holder of the certificate ceased to be entitled to draw a pension embraced two semi-annual periods, and that two examinations had therefore, been omitted. Held that if the result of the surgeon's examination be to show that the disability of claimant had entirely ceased on the 3d of March, 1865, then nothing would be due except from the date of the commencement of his pension to the date of the issue of the pension certificate. If, on the contrary, it be shown that his disability had not entirely ceased on March 3, 1865, payment will be made up to that date, according to the rate of disability then existing.—*Vol. 28, pp. 104, 105.*

VIII.—POWER OF ATTORNEY.

1661. A power of attorney to receive the pension at a designated agency cannot be held valid if payment be made by the agent at another place, on whose rolls the pensioner may be borne.—*Vol. 29, p. 90.*

1662. When a pensioner becomes insane it is not necessary that a commission of lunacy should issue in order to collect his pension, if a power of attorney had been given when he was of sane mind; but the same may be paid to the attorney in fact, who shall file an attested copy of his powers of attorney and make the proper oath.—*Vol. 21, pp. 275, 276.*

1663. Power of attorney to receive pension due from September 4, 1859, to March 4, 1860, though intended to have been from March 4 to September 4, 1859, cannot be explained by parol, but must be allowed, if at all, by the grantor; nor can this office order pay to be made upon it, except in accordance with its tenor.—*Vol. 22, pp. 251, 252.*

1664. Letters of attorney must be dated subsequently to the date of the pension certificate placing the pensioner on the roll, in order to authorize payment to the attorney named therein.—*Vol. 18, p. 286.*

1665. A power of attorney to receive pension is not objectionable for being dated on Sunday, the acknowledgement before the justice of the peace having been made on Monday.—*Vol. 22, pp. 302-312.*

1666. The amount of pension due a pensioner under several acts

of Congress, can be properly paid without a separate power of attorney under each act. One power of attorney will be sufficient, if it covers all the time for which the pension is due under all the acts.—*Vol. 14, p. 141.*

NOTE.—The act of April 1, 1864, (13 Stat., 39,) provides for the payment of \$100 in addition to the pension now received, to the surviving soldiers of the Revolution during their natural lives.

The second section of the act of April 9, 1864, (13 Stat., 46,) makes provision for the payment of pensions to chaplains in the regular and volunteer forces, and to their heirs in a prescribed order of inheritance.

1667. A pensioner may at any time revoke a power of attorney which he has given for the collection of his pension, and demand payment to himself at the agency.—*Vol. 14, p. 464.*

1668. By the fourth section of the act of July 4, 1836, (5 Stat., 128,) granting half pay to widows whose husbands and fathers have died in the service, the attorney of a pensioner is required to make oath, not only that he has no interest in the money by any pledge, &c., but also that "he does not know or believe the same has been disposed of to any other person whatever."—*Vol. 8, p. 43.*

NOTE.—The eighth section of the act of April 10, 1806, (2 Stat., 376,) is a general and permanent law, and forbids any sale, transfer or mortgage, &c, and the attorney is required to make oath that the power, &c., was not given by reason of any transfer, &c.

1669. A power of attorney to draw a pension must be dated and acknowledged on or subsequent to the day on which the pension becomes due.—*Vol. 13, pp. 123, 228, 287, 291, 430; vol. 22, p. 523.*

1670. When interlineations and additions are made in a power of attorney to draw a pension, they must be noted by the magistrate.—*Vol. 6, p. 44.*

1671. By the act of Congress approved September 16, 1850, (9 Stat., 458,) oaths, affirmations, and acknowledgments made before notaries public are to have the same force and effect as if taken before justices of the peace, in all cases where they may be taken before justices under the laws of the United States.—*Vol. 27, p. 387.*

1672. A power of attorney to draw a pension is not vitiated in consequence of its giving authority to draw for a time antecedent to that from which the pension is due.—*Vol. 14, p. 88.*

1673. If the pension agent pay to the attorney more money than the pensioner authorized the attorney to receive, the pensioner is not legally accountable for the excess, unless it be shown that he received such excess or sanctioned the act of the attorney so receiving it.—*Vol. 8, p. 438.*

1674. The oath to be taken by the attorney of a pensioner claiming under the act of July 4, 1836, (5 Stat., 127,) must be administered and certified by the agent who makes the payment, by an ac-

counting officer of the Treasury, or any person qualified to administer oaths. Act July 4, 1836, (5 Stat., 127.)—*Vol. 6, pp. 195, 284.*

1675. When a simple power of attorney is given to draw the money due a pensioner at a certain date, and the pensioner dies before the pension becomes due, the power of attorney is a nullity.—*Vol. 9, p. 531.*

1676. The authority of an attorney terminates with the death of his principal, unless the power be coupled with an interest, which cannot be the fact in pension cases.—*Vol. 20, p. 158.*

1677. The attorneys of commissioned officers who are pensioners, and of widows pensioned under the navy pension laws, are required to make oath that they have no interest in the money they are authorized to receive, "by any pledge, mortgage, sale, or transfer."—*Vol. 11, p. 356.*

1678. An attorney of a pensioner may take the required oath before a notary, when the notary is by law authorized to administer oaths in other cases.—*Vol. 14, p. 2.*

IX.—NOTARY.

1679. Notaries public are not considered as authorized, *ex officio*, to administer oaths in the preparation of pension papers; but if the general authority to administer oaths has been conferred upon them by the statute laws of the particular State in which they resided and are commissioned, the oaths taken before them would be valid and of course respected by the pension agents. It should, however, be shown that such authority exists under the laws of the State.—*Vol. 22, pp. 1, 83. NOTARY PUBLIC, 1072. Supra, 1678.*

NOTE.—Notaries, by the laws of September 16, 1850, (9 Stat., 458,) and April 8, 1864, (13 Stat., 44, sec. 5,) are authorized to administer oaths. Under the act of July 4, 1864, (13 Stat., 387,) declaration of pension claimants must be made before a court of record, or some person having the authority of its seal, except in those cases where the Commissioner of Pensions specially designates persons duly qualified to administer oaths.

1680. It is required by the proviso in the first section of the act of September 16, 1850, (9 Stat., 458,) that the official character of a notary shall be established by other evidence than his seal and signature. The proviso in the first section applies only to cases where the notary has certified that oaths or affirmations were taken before him, and not to certificates of acknowledgment of instruments.—*Vol. 14, p. 111.*

1681. By the act of the general assembly of the State of Ohio, passed March 22, 1849, notaries are authorized to administer oaths in all cases where an oath is required in the execution of papers to draw pensions at the pension agencies or at the Treasury of the United States.—*Vol. 14, p. 62.*

1682. A commissioner of deeds, etc., appointed in the State of New York by the governor of Pennsylvania, may administer oaths to pensioners on the rolls of the latter State, but to none others.—*Vol. 29, pp. 99, 100.*

X.—INCREASED PENSION.

1683. In payments of increased pension the order for the deduction of all payments made since the issue of the first certificate is intended to authorize the deduction only of such amount of the original pension as had accrued and been paid for the period subsequent to the 4th of July, 1864, the date of the increased pension.—*Vol. 30, p. 12.*

1684. When a pensioner has been paid at the rate of \$8 per month up to the 4th of September, 1867, and the pension has been increased to \$15 per month under the act of June 6, 1866, (14 Stat., 56,) he will only be required to make affidavit that he has not been employed in the army, navy or marine service since the date to which payment was last made, if at that date he had made oath in like manner respecting the date of a previous payment.—*Vol. 31, pp. 45, 46.*

PENSION AGENT.

1685. Pension agents are authorized to procure a requisite supply of blanks for pension vouchers, chargeable to the appropriation for revolutionary pensions.—*Vol. 20, p. 533.*

1686. The same person acting as army and navy pension agent is entitled to the maximum compensation for disbursements under both heads, as if made by one and the same officer. See resolution of July 17, 1862, (12 Stat., 629,) and act of June 30, 1864, (13 Stat., 325).—*Vol. 22, pp. 407, 408, 428, 429, 437; vol. 21, p. 576, 579.*

1687. The form of voucher required to be filed by a pension agent in support of his payments presupposes that in all cases he has satisfied himself that the person applying is either the pensioner himself, or some one legally authorized to act in his behalf.—*Vol. 22, p. 188.*

1688. Pension agents are authorized to have the forms printed and furnished to pensioners and individuals employed in the preparation of vouchers for pensioners; and their charges for the expenditure may be allowed in their accounts for contingencies.—*Vol. 12, p. 299.*

1689. The pension agent may, if he thinks proper, require the attorney to receive the money at the office of the agency; though, if it were paid on receipts executed elsewhere, the voucher would not be objectionable on that account.—*Vol. 14, p. 122.*

1690. When a pensioner died and a stranger called on the pension agent, and fraudulently presented the pensioner's certificate, and made oath to his identity, and was paid the amount due the deceased. Held, that the amount could not be allowed to the agent, but was his own loss.—*Vol. 22, p. 201.*

1691. Pension agents are required to certify to the Second Comptroller correct lists of pensions remaining due and unclaimed for 14 months preceding semi-annual payments.—*Vol. 20, p. 273.*

1692. Pension agents may administer all the necessary oaths in the preparation of papers for the payment of pensions. By the act of February 19, 1849, section 2, (9 Stat., 346,) the deputies and clerks of pension agents, authorized by law, have the same power as the agents to administer oaths. But the rule requiring the certificate of the clerk of some court of record attesting the appointment and signature of the officiating magistrate, if he be a justice of the peace or notary, is not thereby relaxed by the accounting officers. See also act of February 22, 1840, section 2, (5 Stat., 367, 468).—*Vol. 12, p. 219.*

1693. When the pension agent has knowledge of the official character of the magistrate, he may dispense with the certificate of the clerk of the court.—*Vol. 23, p. 484.*

1694. The general rule is, that if the pension agent pays to a wrong person, he does so subject to the demand of the party rightfully entitled.—*Vol. 22, p. 188.*

1695. When the wife of a pensioner presents a power of attorney and asks payment from pension agent, she is required to furnish proof of her identity.—*Vol. 21, pp. 298, 314.*

1696. The agent should send his report of pensions due and unclaimed, in May and November of each year, giving a list of those last paid March 4, and September 4, 20 months previously, and hence due and unclaimed for 14 months.—*Vol. 20, p. 471, 472.*

1697. A pension agent on giving a new bond should close his accounts by depositing the funds in his hands in the Treasury under their appropriate heads, and crediting himself with those certificates of deposit and with his disbursements up to the date of said deposit.—*Vol. 20, p. 482, 483, 485, 487.*

1698. Invalid vouchers must be entered together in one abstract, under whatever acts of Congress paid, and numbered from one upwards.

Vouchers for payments to widows and orphans under different acts, must be entered in separate abstracts.

The oath of allegiance is required to be taken once by every pensioner and filed with his voucher, to be forwarded to the Auditor in the regular course of the agent's account.—*Vol. 28, p. 592. ACCOUNTS, 3 and 4.*

1699. The semi-annual report of the pension agent required by official regulation to be made to the Second Comptroller, should contain the name of every pensioner who, during the six months next preceding the date of the report, has re-enlisted or died, and of every widow pensioner whose pension has remained unclaimed for a period of fourteen months after the same became due and payable. The reports should include the six months ending May 5, and November 5, of each year, those dates being two months after the semi-annual

payments, March 4 and September 4, and each terminating a period of fourteen months from the first in the order of time of the three pay days next successively preceding.—*Vol. 28, p. 156.*

NOTE.—The laws of April 6, 1838 and August 23, 1842, requiring this report, were repealed by the 3d section act of July 27, 1868.

PILOTAGE.

1700. Pilotage is confined to conducting into port a vessel in no state of distress or alarm, or having no apprehension of distress arising from antecedent causes. (See Pritchard's Admiralty.) Port charges include light money, harbor fees for anchorage, the privilege of obtaining water, wood, and provisions, entry fees, clearance fees, &c.—*Vol. 26, p. 183.*

1701. Pilotage is not a port charge.—*Vol. 12, pp. 13, 27.*

1702. The United States are not liable to pay pilotage for a chartered vessel, unless expressly made liable by the terms of the charter-party.—*Vol. 10, p. 65.*

PILOTS.

1703. Pilots are not classified with officers, but with seamen, ordinary seamen, marines, and all other persons doing duty on board. Act April 23, 1800, (2 Stat., 45).—*Vol. 24, pp. 551, 552.*

POSTAGE.

1704. Postage being required to be prepaid, the purchase of postage stamps may be allowed, they to be accounted for like other public property. A correct voucher for the purchase of an adequate number of stamps will, therefore, be admitted in the settlement of the officer's account.—*Vol. 16, p. 116.* SECRETARY NAVY, 1939.

1705. An officer's certificate to a postage account is held sufficient by the Navy Department, without an oath.—*Vol. 11, p. 161.* ACCOUNTS, 5.

POWER OF ATTORNEY.

1706. The acquiescence of a principal in some of the acts of an assumed agent binds him as to all the legal acts of the agent in the same matter.—*Vol. 16, p. 456.*

1707. An alteration in a power of attorney must be consented to by the maker of the instrument.—*Vol. 18, p. 31.*

1708. A legal power of attorney, coupled with an interest, is irrevocable. The appointee presenting his power and demanding payment, the amount cannot legally be paid to any other party.—*Vol. 19, pp. 95, 96.*

1709. A power of attorney, not coupled with an interest to receive money due from the United States, is rendered null and void by the death of a person to whom the power of attorney was given. The power must be witnessed by persons other than the magistrate, when the maker of the instrument makes his mark. Neither his widow nor his administrator being authorized to discharge the government from their liability, neither is authorized to receive the money.—*Vol. 22, pp. 452-454. Supra, 1652.*

1710. A substitute for an attorney cannot be recognized by the accounting officers, unless the power of attorney authorized such substitution, or unless the power to the attorney was coupled with an interest.—*Vol. 11, p. 165. Supra, 1708.*

1711. Where two attorneys are empowered to receive money from a disbursing officer, both must join in the execution of the power. An authority given to two by power of attorney, cannot be executed by one, though the other die or refuse to act.—*Vol. 13, p. 144.*

NOTE.—Before the act of an agent can be made evidence, the agency must be proved.—*5 Howard R., 29.*

1712. When a power of attorney has been given to an ordinary creditor or claim agent, a strict inquiry into its validity and the propriety of paying upon it, is not only right but imperative, and necessary to the ends of justice.—*Vol. 25, p. 337.*

1713. When claimant is paid through attorney, the power of attorney should bear date subsequent to certificate and specify the exact amount to be paid in order to comply with the acts of Congress, July 29, 1846, (9 Stat., 41,) and February 26, 1853, (10 Stat., 170.)—*Vol. 25, p. 115.*

1714. A wagoner transferred his pay account to an attorney to whom payment was refused by the quartermaster because the stamp, required by the act of July 1, 1862, (12 Stat., 483,) was not attached. Held, that under the amended revenue act of March 3, 1863, sec. 16, (12 Stat., 724,) payment legally may be made.—*Vol. 25, pp. 420, 421.*

1715. A power of attorney containing a condition precedent cannot be invalidated until that condition be fulfilled. Where the agent and mortgagee of a trust estate makes entry, he is entitled to the rents and profits of the land until the conditions recited in the power of attorney be complied with; and the United States having taken possession of the trust estate for military purposes, are responsible, not to the trustee, but to the agent for rent, so long as the interest and principal due him as mortgagee remain unpaid.—*Vol. 25, pp. 535, 536.*

1716. A power of attorney to A to enter into any negotiation, transaction, or matter whatsoever, as to the business of B, is a special agency to do certain enumerated acts in respect of the business of B, and not a general power to receipt for and collect money due B under a contract.—*Vol. 25, pp. 689, 690.*

1717. The jurat of the magistrate in a power of attorney is not

sufficient; the official character of the magistrate must be verified by the clerk of a court of record.—*Vol. 21, p. 356.*

Certificate not necessary to each jurat. NOTARY PUBLIC, 1072.

1718. A power of attorney coupled with an interest to collect from the government a claim due the principal and liquidate the debt of a third party, is not invalidated by an assignment of that claim subsequently made.—*Vol. 28, pp. 462, 463.*

1719. A power of attorney, being a personal trust, is null and void from the day of the death of the grantor.—*Vol. 28, p. 430.*

1720. B., an attorney, non resident of the District of Columbia, employed a resident agent to attend to his business before the executive departments. He afterwards, on going out of business, turned over his unsettled claims to C, his successor. Held that such transfers of powers of attorney, unless coupled with an interest, must have the consent of the principal in order to be valid, and that the right of the agent to act depended upon the authority of the original attorney to employ a substitute, no power for that purpose being conferred or taken away by B.—*Vol. 29, p. 574.*

1721. But the responsibility of the government extends to the applicant only, and the qualified agency which it acknowledges in such cases, under the act of February 26, 1853, (10 Stat., 170,) excludes any lien for services upon the things relating to the agency.—*Ibid.*

PREMIUM.

1722. An Indian agent paid a premium for gold and silver coin to enable him to make the annuity payment to the Pottawatomie Indians, but this expenditure was held to be a violation of section 6, act of August 6, 1846, (10 Stat., 60.)—*Vol. 28, pp. 712, 713.* DISBURSING OFFICER, I, 740.

PRESENTS.

1723. If naval officers, when in foreign countries, receive presents, and make presents or payments in return, it must be done at their own expense, and not at the expense of the United States.—*Vol. 7, p. 290.*

PRISONER OF WAR.

1724. In the case of the application of a widow of a deceased prisoner of war, or of the guardian, for arrears of pay, &c., the certificate of the Paymaster General is required in order to show whether or not payment for any part of his services during his imprisonment has been made, the muster and pay rolls of the company frequently not showing any entry of such payment.—*Vol. 28, p. 335.* PAY, I, 1159, 1161.

1725. The officers and crew of a steamboat impressed into the military service of the United States were captured while doing duty with the vessel. Held that payment, as of actual service, *pro opere et labore*, was due them for the time they were kept as prisoners of war. But the pilot was allowed a moiety only of his monthly pay, on the ground that the constant risk he ran while on active duty, and which was the reason of his receiving higher proportionate wages, was wanting.—*Vol. 29, p. 654.*

1726. Citizens who were ordered by a military officer to assist him while guarding with his command public stores, and were taken prisoners in repelling an attack of the enemy, are not, under existing laws, entitled to pay for their time while imprisoned.—*Vol. 29, p. 355.*

1727. The United States seized and employed the steamer *City Belle* on the *Mississippi*. She was afterwards captured by the enemy and her officers and crew imprisoned. Held that payment for the time they were prisoners should be made.—*Vol. 28, p. 85.* DESERTER, III, 719; PAY, I, 1154–1164; VI, 1275.

PRIZE MONEY.

1728. A naval officer sold all his future interest in prize money. Held, that the assignment was invalid under the act of February 26, 1853, (10 Stat., 170.)—*Vol. 25, pp. 565, 566.*

1729. In the case of a person who has left the naval service, prize money cannot be paid on a power of attorney granted before the adjustment of the claim, and issue of draft therefor. See acts of June 30, 1864, (13 Stat., 310, sec. 12,) and February 26, 1853, (10 Stat., 170.)—*Vol. 28, p. 238.*

1730. To authorize an agent to receive the certificates, in payment of prize money, his power of attorney must specify the names of the capturing vessels, and of the prize or prizes, if there be more than one, and the year in which the capture was made should also be given.—*Vol. 29, p. 166.*

1731. In the distribution of prize money, a marine officer borne on the books of the vessel making the capture, is entitled to share according to the sum of his official compensation, deducting one ration, that being his "rate of pay in the service" within the meaning of the law of July 17, 1862, (12 Stat., 606.)—*Vol. 27, p. 86.*

1732. Under an appropriation granting prize money to the captors of a ship, and enumerating the classes to whom payment should be made, the surplus of the appropriation left after the apportionment, cannot be distributed among the survivors, but reverts to the treasury, subject to reclamation at any future time by captors or their representatives. When one class has been found entirely unrepresented among the captors, the portion of the class thus unrepresented reverts to the whole, and is divided, *pro rata*, among those composing the other classes duly represented by the captors. Case of *Winder*,

in brig Caledonia. Acts February 23, 1859, (11 Stat., 564,) and April 23, 1800, (2 Stat., 22.)—*Vol. 22, p. 116–119.*

1733. Under the acts of April 23, 1800, (2 Stat., 45,) and July 17, 1862, (12 Stat., 606, sec. 2,) relating to prizes, the acts and interests of all the captors became vested and fixed the moment the capture was effected. And in all cases of capture made before the law of July 17, the distribution must be made under the terms of the act of April 23, 1800, (2 Stat., 45.)—*Vol. 27, p. 293.*

NOTE.—See also act of June 30, 1864, (13 Stat., 306,) regulating prize proceedings and the distribution of prize money, &c.

1734. An officer's interest in a prize vests at the time of its capture, and his rate of pay at that time is the basis on which the distribution is made, as well as the basis of his taxation.—*Vol. 30, p. 562.*

1735. In the case of an enlisted seaman who died in the naval service, leaving brothers, sisters, and nieces, the children of a deceased sister, prize money is inherited by the nieces, *per stirpes*, equally with the surviving brothers and sisters.—*Vol. 29, p. 586.*

1736. Prize money for purposes of taxation is considered as salary, notwithstanding its payment may be delayed until after the claimant has left the service.—*Vol. 30, p. 149.*

1737. The Secretary of the Navy decides who are entitled to share in the distribution of prize cases.—*Vol. 25, p. 592.*

1738. An officer performing the duties of magistrate at San Francisco at the time of the capture of the *Admittance*, claimed to share in the distribution of prize money. Held, that although his name was borne on the rolls of the ship making the capture, he is precluded from sharing in the prize, because he was not engaged in co-operative service. Lieutenant Bartlett's case, act of April 23, 1800, (2 Stat., 52, sec. 5.)—*Vol. 19, pp. 257, 258.*

1739. In the distribution of prize money, third assistant engineers will be ranked in the third class and along with sailmakers and second assistant engineers. Acts of April 23, 1800, (2 Stat., 52, sec. 4;) and August 31, 1842, (5 Stat., 577, sec. 2.)—*Vol. 24, pp. 187, 188.* DESERTER, II, 708; EXECUTORS AND ADMINISTRATORS, 843.

PROFESSIONAL BOOKS.

1740. Professional books, relating to the construction of public works, may be purchased and paid for out of the appropriations for such works.—*Vol. 31, p. 357.*

PROFESSIONAL SERVICES.

SEE *Legal Expenses.*

1741. The necessity of employing counsel, and the amount to be paid for their services, are subjects for the decision of the executive departments of the government.—*Vol. 9, p. 2.*

1742. Disbursing officers have no right to pay attorneys or counsellors-at-law for professional services in *habeas corpus* cases, in the investigation of titles, in prosecutions by the United States, or in any other way, unless the account for such services shall have been previously approved by the head of the department in which they were rendered.—*Vol. 20, pp. 299, 300.*

1743. Professional services may legally be paid out of the appropriation which had the benefit of them, or in behalf of which they were rendered; but the practice almost invariably has been, both in the army and navy, to pay for such services out of “contingencies.”—*Vol. 31, p. 483.*

PROPERTY.

SEE *Impressment.*

I. LOST.

II. SEIZED.

I.—LOST.

1744. In order to sustain a claim for property lost in the service of the United States, evidence of the commanding officer must be adduced, under whom the claimant served at the time when the loss occurred, describing the property, the value thereof, the time and manner in which the loss happened, and whether or not it was sustained without any fault or negligence on the part of the claimants.—*Vol. 12, p. 271.*

1745. A claimant for property lost in the service of the United States, is required by the regulations to produce the testimony of the officer under whose command he was serving when the loss occurred. If that cannot be produced, the next best evidence of which the case is susceptible will be required. The claim cannot be admitted on the testimony of the claimant alone.—*Vol. 10, pp. 172, 195, 379, 465. AFFIDAVIT, 60.*

1746. There is no law authorizing the officers of the treasury to pay for private property lost by shipwreck.—*Vol. 12, p. 310.*

1747. When property is thrown overboard for the safety of the vessel, and it shall appear that the vessel was overloaded by the owner's agent, from improper motives, the entire loss of the property is chargeable upon the ship-owner, even if it were shipped to be carried on deck.—*Vol. 11, p. 431.*

1748. When the property lost by the perils of the sea was properly secured and well taken care of, the loss must be borne by the shipper. If the loss occurred through the negligence of the ship-owner or his agents, the loss must fall on him. For property not lost by the perils of the sea, nor delivered to the consignee, nor accounted for, the master of the vessel is accountable.—*Vol. 11, p. 424. FREIGHT, 886.*

1749. A rowboat loaned to the quartermaster's department, under a stipulation that if lost it should be paid for, was lost and the value claimed; allowed under the act of March 3, 1849, (9 Stat., 415, sec 2)—*Vol. 30, p. 357.*

1750. A contractor agreed to cut, cure, and stack bay near Fort Smith, Arkansas, to be paid for when inspected and accepted by the proper officer of the government. Guards and escort were furnished as agreed, but were attacked and overpowered by a force of the enemy and the hay burned. Claim was made for the value, although the hay had not been inspected. Held that the government, having assumed the war risk, was responsible for the loss upon proof of the value of the hay destroyed.—*Vol. 30, p. 146.*

II.—SEIZED.

1751. A United States quartermaster took mules and wagons of B, giving a receipt. B admits that he has received \$4,000. The Quartermaster General approves the claim for additional compensation, limiting the amount to \$1,000. Held that payment may be made if claimant shows, by indubitable evidence, that the sum paid was less than the property was worth.—*Vol. 25, p. 299.*

1752. Barrian & Brothers, of New Orleans, shipped from Europe to Havana sundry bales of gray blankets, intending to run the blockade at the mouth of the Mississippi. The vessel containing the blankets arrived at New Orleans after the surrender of that city to General Butler. The blankets were seized by the provost marshal for the use of the hospitals. A per centum of profit upon cost charges was disallowed, and it was held that the invoice, marine insurance, and proportion of charges, together with exchange and freight, are an equitable allowance in the adjustment of the claim.—*Vol. 25, pp. 158-163.*

1753. A barge was seized by the quartermasters' department and never returned. Claim was made for value and for services. Value only was allowed, it being held that just compensation to the owner for taking his property for public use means the actual value in money, without addition for estimated profits, or advantages accruing to the owner for the public use of his property.—*Vol. 30, p. 147.* EVIDENCE, 818; CONSTRUCTION OF STATUTES, 542; IMPRESSMENT, 976, 977; CAPTURE, 337, 338, 339.

1754. Claims for the use or appropriation by the army, of private property belonging to inhabitants of States in rebellion, cannot be entertained by the accounting officers. Act of July 4, 1864; (13 Stat., 381;) February 21, 1867, (14 Stat., 397.)—*Vol. 29, p. 30; Vol. 31, p. 41.*

PROVOST MARSHAL GENERAL.

1755. Under the act of March 3, 1863, (12 Stat., 732,) prescribing the rank, pay, and emoluments of the Provost Marshal General, that officer is entitled to all the advantages intended to be conferred, if he held the position at the time of the passage of the act. And the condition precedent to a title by the incumbent to the designated pay and allowances is entirely irrespective of any further executive action.—*Vol. 26, p. 168.*

PURCHASES.

1756. In all cases where articles are purchased, the date of the purchase and certificates of inspections and receipt of the articles by the proper officers, are required. And if the purchase be made under a contract, this fact, with the date of the contract, should be stated in the voucher, and the contract itself should be filed in the office of the Second Comptroller; and if it be by open purchase, the usual certificate in such case should be given in addition to those of inspection and receipt.—*Vol. 11, pp. 489, 495.*

1757. The specific purpose for which all articles are purchased or used should be distinctly noted on the vouchers, to enable the accounting officers to designate the appropriation upon which they should be charged.—*Vol. 9, pp. 277, 299, 367.*

1758. In all accounts for articles purchased, the date of each purchase, the name, number, price, &c., of each article must be distinctly specified in the account. All receipts for payments of money must express the amount paid in words legibly written at full length.—*Vol. 9, p. 367.*

1759. When an agent for the United States purchases articles in England for the use of the government, to be paid for *there*, on an adjustment of the account *here*, the exchange is to be included according to the current rate at the time of making the payment.—*Vol. 7, p. 33.*

1760. No voucher will be admitted in support of a purchase of articles for the use of the army, where the observance of the law of March 3, 1809, (2 Stat., 536, sec. 5,) has been neglected.—*Vol. 9, p. 177.*

NOTE.—All purchases and contracts for supplies or services shall be made by open purchases, or by previously advertising for proposals.

1761. When a purchase is made by an officer of the United States, authorized to make purchases, he is to be considered, in making such purchase, as the agent of the government, and the party from whom he purchases is not bound to show what disposition has been made of the property.—*Vol. 6, p. 442; vol. 15, p. 64.*

1762. When a purchase is made by a person or officer claiming to

be duly authorized, but not so in fact, the government is not bound by the contract, unless the vendor shows that the property purchased has been actually used in the public service.—*Vol. 6, p. 442.*

1763. Under the fifth section of the act of March 3, 1809, (2 Stat., 536,) all such services or supplies for the navy, as are to be rendered or furnished at a future day, must be contracted for by previously advertising for proposals; and this proceeding is not to be dispensed with, except when the public exigencies require the immediate delivery of the articles, or the performance of the services.—*Vol. 10, pp. 10, 139, 145, 150, 154, 276, 367.*

1764. When the exigencies of the public service require the immediate purchase and delivery of supplies, and such supplies are necessarily obtained by open purchase, without advertising for proposals, the necessity of the purchase in that manner must be certified by the commanding officer of the yard; and when the purchase is made under a contract, growing out of advertising for proposals, that fact should be certified in like manner on the voucher.—*Vol. 10, pp. 10, 139, 145, 150, 154, 276, 367.*

1765. Where an account for the purchase of arms in Europe was reported, but no evidence of authority for making such purchase was presented, and no bill or invoice of the large account of arms purchased accompanied the account, and the prices paid were much greater than the cost of the arms in New York, the account was suspended for want of proof.—*Vol. 25, pp. 217, 218, 271.*

1766. A disbursing officer purchased on credit, and obtained receipts from the individuals furnishing the supplies, when nothing in fact was paid. In so doing he committed an offence punishable by fine and imprisonment. Act of August 6, 1846, (9 Stat., 63, sec. 16.) The laws and regulations require evidence of payment, not only correct in form, but true in fact. See act of March 3, 1853, (10 Stat., 239.)—*Vol. 19, pp. 409, 410. CONTRACT, III, 561; GUARDIAN, 937.*

QUARTERMASTER.

SEE *Assistant Commissary.*

1767. An officer, acting as quartermaster or commissary, is not entitled to the additional compensation therefor when on furlough.—*Vol. 6, p. 545.*

1768. A regimental quartermaster who performs the duties of his own office and those of an assistant commissary at the same time, may be paid the additional allowance of either of these officers that he may elect; but not of both.—*Vol. 20, p. 207.*

1769. But one regimental quartermaster to each regiment raised for the Mexican war can legally be paid.—*Vol. 13, p. 52.*

1770 The act of April 14, 1818, (3 Stat., 426,) abolished, (among others,) the office of quartermaster general of division in the army.

It also created that of Commissary General, the rank and emoluments of which are higher than those of quartermaster general of division, and gave three months' extra pay to all officers discharged by its operation. The officer who held the first-named appointment was, with an interval of only four days, appointed to the latter, which he has ever since retained. Held that he was not "deranged," within the meaning of the act, so as to become entitled to the extra pay.—*Vol. 15. p. 86.*

1771. The laws of Congress provide for one assistant quartermaster in the marine corps. Only one, therefore, can claim pay as such.—*Vol. 14, p. 163.*

NOTE.—The act of July 25, 1861, (12 Stat., 275,) allows two assistant quartermasters.

1772. No provision is made by law for extra compensation to regimental quartermasters of engineer regiments. And the Secretary of War decided, May 29, 1863, that adjutants and regimental quartermasters of volunteer engineers are not entitled to any extra pay. The ten dollars per month additional was, therefore, disallowed in the case of Lieutenant Brown.—*Vol. 26, p. 19.*

1773. A regimental quartermaster, acting as commissary of subsistence, is not entitled to additional pay of \$20 per month, less one ration per day, for performing commissary duties.

The decision of this office, of March 27, under the act of July 28, 1866, (14 Stat., 332,) on the question whether the pay proper of a regimental quartermaster, under that act, was the pay proper of a lieutenant, exclusive or inclusive of the \$20 allowed for performing the duties of regimental quartermaster, was, that the law consolidated the permanent and contingent pay of that office, and made their sum thenceforth the pay proper of that position.—*Vol. 31, p. 96.*

1774. An officer acting as Quartermaster General during the absence of that officer from the seat of government, is not entitled to be paid in that capacity, either under the act of July 4, 1836, (5 Stat., 117,) or otherwise.—*Vol. 15, p. 307.* CLERKS, 476, 477; DELINQUENT OFFICERS, 658.

QUARTERMASTERS' STORES.

1775. When an officer turned over quartermasters' stores to a subordinate, and the latter some time afterwards turned over the same to a third party, less a difference in value of fifteen dollars, held that as there was no doubt that the articles deficient were expended in the service, and as the person first turned over to was in an insurrectionary district, no explanations were possible, and the charge should be admitted.—*Vol. 25, pp. 169–171.*

1776. Where a quartermaster or other competent officer of the government purchases supplies for the army of a private person, and gives vouchers of such purchase, payment cannot properly be with-

held because the certifying officer neglected to account for the property to the quartermaster's department.—*Vol. 28, pp. 355, 356.*

1777. To authorize the settlement of a claim filed under the act of July 4, 1864, proof of loyalty of claimant, and that the claim itself originated in a loyal State, or within exceptions as declared by the President's proclamation of January 1, 1863, are required as conditions precedent to an allowance.—*Vol. 28, pp. 667, 668.*

1778. A claim for quartermasters' stores presented under the act of July 4, 1864, (13 Stat., 381,) must contain indubitable evidence of the loyalty of the claimant, the character of the witnesses must be shown, and, where possible, the affidavit of the United States officer who took the property, be produced. It must also be recommended for settlement by the Quartermaster General.—*Vol. 28, pp. 475, 476.*

1779. Where coal owned in common by several steamboat companies had been taken by the quartermaster's department for the use of the government, and a claim for payment was presented by one of the companies, it was held that until evidence be furnished that each company was the owner in common of the amount stated by the claimants, and that the fractional part by them claimed, under a division and partition of the coal, would legally be their proportion, the claim cannot be paid.—*Vol. 28, p. 518.*

1780. In the claim of a loyal citizen of North Alabama for stores taken by the army, held that such claims could not be entertained by the accounting officers, nor could payment in such cases be made, under the act of July 4, 1864, (13 Stat., 381,) that law providing only for payment of "claims of loyal citizens in States not in rebellion."—*Vol. 30, p. 111.*

1781. Claims of loyal citizens of States not in rebellion for quartermasters' stores or commissaries' supplies, receipted for by proper officers, or taken without giving receipts, must first be recommended to the Third Auditor by the Quartermaster General or Commissary General, respectively, before settlement can be made by the accounting officers of the Treasury Department. Act of July 4, 1864, (13 Stat., 381.)—*Vol. 30, p. 77.*

1782. In a claim made by the guardians of minor heirs, under the act of July 4, 1864, (13 Stat., 396, sec. 4,) for property in Tennessee taken by the quartermaster's department, it was held that the disloyalty of the guardians was not a bar to recovery.—*Vol. 30, pp. 110, 111. EVIDENCE, 818; PROPERTY, II, 1754; CONTRACT, I, 549, 546.*

QUARTERS AND FUEL.

I. ARMY.

- a.—*Who are entitled.*
- b.—*Commutation and while on leave.*
- c.—*Public quarters ; not an emolument.*

II. MARINE CORPS.

I.—ARMY.

- a.—*Who are entitled.*

1783. The general regulations, authorizing payment of commutation for fuel and quarters, restrict it to the time when the officer is actually at his post, or when temporarily absent on duty, and do not treat it as an emolument.

Such is the construction they have always received from the Secretaries of War and the accounting officers.

Nor is an officer of engineers, in charge of several works, but absent on leave, entitled to the extra per diem allowed by Engineer Regulations 77, to meet the expenses of fuel and quarters at the additional posts.

By temporary absence is meant an absence for a period not exceeding thirty days.—*Vol. 15, pp. 49, 50.*

1784. Under the army regulations in force in 1830, officers of the corps of engineers, engaged in the construction of fortifications or other public works, are put on the same footing in regard to the allowance of mess-room and kitchens, and fuel for the same, with officers at garrisoned posts, as provided by paragraphs 1020 and 1025.—*Vol. 3, p. 287.*

1785. The commander-in-chief of the army stands on the same footing with all other officers as to quarters and fuel, except as to amount. He is entitled to his regulated allowance of commutation, when not provided with public quarters or tents, and no more.—*Vol. 15, p. 320.*

NOTE.—The Paymaster General is entitled to fuel and quarters. (*See Opinions Attorneys General, July 18, 1829, Vol. 2, p. 236.*)

1786. If an officer holding a brevet rank is assigned to the appropriate duties of that rank, or has a command according to it, he is entitled to the allowance of fuel and quarters of his brevet rank in kind, but not to commutation therefor. And no law interdicts the employment and payment of aides of a brevet general when he is assigned to duty as such.—*Vol. 30, p. 265.*

1787. In the Army Regulations in force March 25, 1830, (paragraph 1025, relative to additional fuel and quarters,) the term "*mess*

of officers" means a number not less than six, and the term "posts" includes permanent as well as other posts.—*Vol. 3, pp. 156, 189.*

1788. The right of an officer to quarters and fuel is not like pay and subsistence, an absolute right pertaining under all circumstances to the officer's rank, but depending on certain conditions of duty and service; and his employment upon civil works not being a military duty, although one in which quarters and fuel were obviously necessary, the allowance therefor must be regarded as properly chargeable, not upon a military appropriation, but upon the several appropriations for the civil works on which the officer might be engaged. Act of August 30, 1852, (10 Stat., 56.)—*Vol. 16, pp. 200, 447, 448.*

1789. Quarters and fuel of officers engaged on fortifications and military works are chargeable to the appropriation of the quartermaster's department; but when they are employed on civil works they are chargeable to the appropriations for the respective works named in the act of August 30, 1852, (10 Stat., 56.)—*Vol. 16, pp. 104, 447.*

1790. To be entitled to quarters and fuel, or commutation therefor, an officer must be assigned to some particular duty at the place, when he makes his requisition for them on some quartermaster. In case an officer be ordered to some point to await orders, it has been held that he is not entitled to quarters and fuel.—*Vol. 19, p. 144; vol. 27, pp. 228, 229.*

1791. The allowance for fuel and quarters, not being determined by statute, but within the control of the War Department, the accounting officers cannot go beyond the Army Regulations when they apply, nor provide for a *casus omissus*. The question of the right of an officer to any allowance for fuel and quarters, exceeding that authorized by the regulations, can be adjusted only by the Secretary of War, whose decision in this matter governs as the law in the case.—*Vol. 19, p. 162.*

1792. The practice in relation to quarters and fuel is not established by law, but regulated by orders of the War Department and subject to its control. That department having permitted officers to occupy public quarters and receive commutation of fuel, vouchers for the commutation of either, though the other was furnished in kind, will be approved by this office unless the facts show that both should have been either commuted or furnished in kind.—*Vol. 28, p. 730.*

1793. The allowance for quarters and fuel is properly to be deducted from the amount allowed to officers as collectors of military contributions under the act of March 3, 1849, (9 Stat., 412.)—*Vol. 18, p. 320.*

b.—Commutation and while on leave.

1794. Officers on leave of absence or waiting orders are not entitled to fuel and quarters. An officer who receives his quarters in kind must receive his fuel in kind also.—*Vol. 15, p. 142.*

1795. Under existing decisions, members of courts-martial, away from their permanent posts, are entitled to receive commutation of quarters and fuel at such posts, though their absence may exceed thirty days. This is an exception to the general rule.—*Vol. 15, p. 337.*

1796. Where an officer is retained on court-martial service after the muster out of his regiment, the order which assigns him to duty is regarded as assigning him to a new station, and entitling him to quarters and fuel in kind, or commutation therefor, but not to per diem.—*Vol. 29, p. 453.*

1797. The period of "not exceeding thirty days" is not the limit of "temporary absence," in the case of an officer serving on court-martial, so far as it affects his commutation of quarters and fuel.—*Vol. 18, pp. 203, 204.*

1798. And this rule applies to officers of the pay and inspector general's departments at Washington.—*Vol. 28, p. 465.*

1799. Section thirty-one, act of March 3, 1863, (12 Stat., 736,) and section eleven, act of June 20, 1864, (13 Stat., 145,) impliedly sanction the continuance of commutation for quarters and fuel to officers absent on account of wounds; nor is the absence limited to thirty days within any one year, in case of sickness or wounds. The War Department has the right to adopt such a rule, and when adopted it will be recognized by this office, and applied in those cases already having occurred of a clearly meritorious character, and sanctioned by the War Department.—*Vol. 28, pp. 614, 615.*

1800. The act of August 23, 1842, (5 Stat., 512,) expressly prohibits commutation for fuel and quarters to officers of the army serving at the armories, though the quartermaster may hire quarters at the armories for the actual occupation of officers.—*Vol. 15, p. 246.*

1801. Chaplains are not entitled to the same allowances for quarters and fuel as surgeons, which are those of majors, but only to those of captain.—*Vol. 28, p. 619.*

1802. Officers at armories are entitled to quarters and fuel in kind, but not commutation therefor.—*Vol. 16, pp. 106-108.*

1803. An officer not assigned to any specific duty is not entitled to commutation for fuel and quarters. Army Regulations, par. 965, ed. 1841.—*Vol. 17, pp. 100, 489.*

1804. Officers waiting orders, and the undetached staff of a general waiting orders, are not entitled to commutation of fuel and quarters.—*Vol. 30, pp. 687, 688.*

1805. Quarters and fuel at permanent stations are not allowed to officers absent on duty more than 30 days.—*Vol. 17, p. 225.*

1806. When an officer of the quartermaster's department neglects or declines to furnish quarters to an officer entitled thereto on a proper requisition, on the ground that the quarters at the post are occupied by an individual who is not entitled under the regulations to the quarters, no payment for commutation of the officer's quarters can be allowed.—*Vol. 19, p. 377.*

Commutation will not be allowed when public quarters might have been furnished.—*Vol. 19, p. 377.*

1807. A positive regulation must be found making an allowance to an officer before it is admissible. An officer must be assigned to some specific duty at the post where he claims to be entitled to quarters and fuel, must make requisition in due form upon the quartermaster therefor, and, if they cannot be furnished, he becomes entitled to a money allowance in lieu thereof, provided he is on duty without troops.—*Vol. 22, p. 120.*

1808. The government reserves the right to furnish quarters and fuel in kind, or to commute them to all officers entitled to them. If, however, the government fail to supply quarters and fuel, the officer is entitled to commutation, but not to the increased price of rations under the act of March 3, 1865, (13 Stat., 497,) and *vice versa*.—*Vol. 28, pp. 148, 149.*

NOTE.—But by section 35, act of July 28, 1866, (14 Stat., 337) officers furnished with quarters in kind are not entitled to the increased commutation of rations.

1809. Where the government tendered quarters in kind or by commutation, and the officer elected to decline both, and placed himself upon his ration allowance, (longevity included,) so as to take advantage of the increased price of fifty cents as one "not entitled to commutation for fuel or quarters," under the third section of the act of March 3, 1865, it was held that the government under the existing regulations may elect in all cases whether to furnish quarters and fuel or pay the commutation therefor; and the officer may demand one or the other, and it is his duty to accept that which the government can supply. And commutation of the same having been tendered, an officer cannot reject either or both, but must be held "entitled" to them according to the act of March 3, 1865, (13 Stat., 497, sec. 3,) and hence to be within the excepted class excluded from the increased price of rations.—*Vol. 28, p. 34.*

1810. Officers assigned by the War Department, under orders to report for duty to the Secretary of the Interior, for the purpose of treating with the Indians, are entitled to commutation of quarters and fuel when not on duty in the field.—*Vol. 28, p. 763.*

1811. Fuel and quarters are by usage commuted to officers under arrest and upon trial, provided they are entitled to them at the time of arrest.—*Vol. 25, p. 305; vol. 30, p. 567.*

1812. Under the army regulations, officers and troops in the field are not entitled to commutation for quarters and fuel.—*Vol. 26, p. 88.*

1813. The price of merchantable hard wood is established as the standard for commutation of fuel, when no kind is specified.—*Vol. 30, pp. 688, 689.*

1814. Commutation of quarters for officers' servants is not allowed.—*Vol. 30, p. 57.*

1815. The additional allowance of fuel and quarters provided for

by paragraph 1074, Army Regulations, may be commuted.—*Vol.* 30, *p.* 443.

c.—Public quarters; not an emolument.

1816. It is not allowable for an officer who is accommodated in public quarters, but who, from a deficiency of public quarters, cannot be furnished with his full complement of rooms, to commute for the difference.—*Vol.* 15, *pp.* 143, 186.

1817. If the exigencies of the service require the quartermaster to hire private quarters for the accommodation of officers, in connection with public quarters, and they are actually occupied as such, the rent paid will be allowed.—*Vol.* 15, *p.* 186.

1818. On the 16th of October, 1847, the Secretary of War issued an order requiring the officers of the quartermaster's department to issue to the families of officers of the army serving in the field, who reside in public quarters, one-half the allowance of fuel authorized by regulations to their respective grades.

1819. Fuel and quarters are not an emolument, but are for the necessary accommodation and comfort of the officer.—*Vol.* 15, *pp.* 143, 186

1820. Fuel is an allowance which increases the compensation of him who receives it, and is an emolument only in the same sense as quarters, forage, and servants are.—*Vol.* 19, *p.* 475. *Supra*, 1797.

II.—MARINE CORPS.

1821. To entitle an officer of marines to receive commutation for fuel and quarters, he must be assigned to duty at the place where he claims it. If on leave or furlough, or waiting orders, he is not entitled to it.—*Vol.* 15, *pp.* 94, 447.

1822. An officer of the marine corps claiming fuel and quarters, transportation, or travelling allowances, must certify his accounts according to the forms issued from the office of the Second Comptroller, in a letter to Major Nicholson of the 30th of January, 1852.—*Vol.* 15, *p.* 142.

1823. The second section of the act of April 16, 1814, (3 Stat., 124.) provides that certain staff officers of the marine corps, including the quartermaster, "shall respectively receive \$30 per month in addition to their pay in the line, in full of all emoluments." Since that law went into operation the officers therein named are not entitled to forage or additional fuel.—*Vol.* 10, *p.* 10.

1824. If an officer stationed at a commutation post commutes for fuel and quarters, he can claim no more than the commutation allowance; but he has a right to demand his fuel and quarters in kind, and it is the duty of the government to furnish them.—*Vol.* 6, *p.* 82.

1825. There can be no allowance by way of commutation for quarters and fuel to marine officers when at sea.—*Vol.* 10, *p.* 79.

1826. An officer of marines relieved from duty at one post and ordered to proceed to another point, and there await further orders, is not entitled to quarters and fuel.—*Vol. 17, p. 100.*

1827. The officer in command of the marine guard of a ship laid up in port for the winter, is not entitled to commutation of fuel and quarters.—*Vol. 16, p. 146.*

1828. The sergeant major and quartermaster sergeant of the marine corps received, in 1859, an issue of fuel as difference between the amount used and the maximum allowance by regulation, from the 1st of January, 1857, to the 31st of March, 1859. Held that their pay should be stopped till the value of the wood had been refunded, as fuel is not an emolument, and what is not consumed during the time for which it is allowed, belongs to the government.—*Vol. 28, p. 357.*

1829. Accommodations on shipboard are "quarters" as to army and marine officers, but not as to navy officers in the meaning of General Order of the Navy Department, No. 75, 1866. (See decision of the Secretary of the Navy, December 1, 1867, and of the Secretary of War, December 12, 1867.)—*Vol. 31, p. 39.* MILITARY CONTRIBUTION FUND, 1645.

RATIONS.

A. OF THE ARMY.

- I.—*Rations and Commutation.*
- II.—*Additional Rations.*
- III.—*Double Rations.*
- IV.—*Longevity Rations.*

B. OF THE MARINE CORPS.

- V.—*Rations.*
- VI.—*Double Rations.*
- VII.—*Longevity Rations.*

C. OF THE NAVY.

VIII.—*Rations.*

A.—OF THE ARMY.

I.—*Rations and Commutation.*

1830. Under the 14th section of the act of March 30, 1814, (3 Stat., 115,) providing that any officer, non-commissioned officer, or private, captured by the enemy, should receive, while in captivity, his pay, subsistence, and allowances, as if in service, the ration is to be commuted at the rate established by law.—*Vol. 11, p. 395.*

1831. There is no authority of law or regulations for the purchase of whiskey or spirits for the army.—*Vol. 19, pp. 285-287.*

1832. A paymaster's clerk is not precluded from commutation of rations on account of temporary illness contracted in the line of his duty. Act of August 31, 1852, (10 Stat., 108, sec. 5.)—*Vol. 25, p. 622.*

NOTE.—The act of June 20, 1864, (13 Stat., 145, sec. 10,) increases the pay, and prohibits the allowance of rations to paymaster's clerks.

1833. A claim for services for cooking rations, was allowed on the ground that the authority to contract for cooked rations, as implied from paragraph 156, Revised Regulations, carries with it the authority to contract for cooking them.—*Vol. 29, p. 349.*

1834. An officer is entitled to actual necessary expenses for subsistence while travelling from place of discharge to place of enlistment; provided transportation in kind only has been received.

Commutation is not allowed.—*Vol. 28, p. 706.*

1835. An officer travelling with troops is not entitled to the amount necessarily expended by him for subsistence above the commutation price of his rations.

His subsistence, while travelling, is not among the additional expenses for which reimbursement is made by law or regulation, as his expenses for that object must accrue whether he be on duty or not, travelling or stationary.—*Vol. 29, p. 361.*

1836. Forage and wagon masters are entitled to the same commutation price of rations as commissioned officers. Acts of February 21, 1857, (11 Stat., 163;) July 5, 1838, (5 Stat., 257, sec. 10.)—*Vol. 20, p. 240.*

1837. The compensation of officers of the Veteran Reserve Corps, and of the volunteer service, on duty in the Freedmen's Bureau, follows all changes which the laws in existence on the 16th July, 1866, would have wrought in the pay of the grades to which they belonged; and after the 28th of July, the commutation price of their rations will be but 30 cents.—*Vol. 30, pp. 483, 484.*

1838. Commutation of rations is allowed to a paroled prisoner of war, but payable only to the soldier himself, heirs being excluded.—*Vol. 28, p. 765.*

NOTE.—So up to March 2, 1867, (14 Stat., 422,) when by the third section of that act it was authorized to be paid to widows, children, parents, brothers, and sisters of decedent in that order.

1839. In the case of a soldier held a prisoner of war, his commutation of rations is a personal allowance, and if not reduced to possession by him during his lifetime, all right to it is gone.—*Vol. 29, p. 543.*

NOTE. The law of March 2, 1867, section seven, (14 Stat., 422,) amended the joint resolution of July 25, 1866, (14 Stat., 364,) and authorizes payment of the commutation, when the soldier died as a

prisoner or after release, to widow, children, parents, brothers, and sisters, in that order.

1840. Sergeants and corporals of ordnance, while on furlough by competent authority, are entitled to commutation at the rate of one and a half rations per day. See act of February 8, 1815, sec. 11, (3 Stat., 204,) and July 5, 1862, sec. 3, (12 Stat. 508,) and paragraph 1243, Army Regulations, edition 1863.—*Vol. 31, p. 318.*

1841. A suspension from *duty* and pay, leaving the officer his rank, does not necessarily exclude him from any portion of his compensation except *pay proper*, and he may be entitled to commutation of rations and other allowances.—*Vol. 31, p. 425.* PAY, I, 1106; TRAVEL PAY, II, 2169.

II.—*Additional Rations.*

1842. Lieutenants in the receipt of extra pay for staff duties, were not affected by the law of 1827, (4 Stat., 227,) and are entitled to only three rations per day when in the performance of staff duties, and six when in command of a double ration post.—*Vol. 7, p. 233.*

1843. The ration deducted under the law of March 2, 1827, (4 Stat., 227,) from the allowance of a subaltern line officer performing staff duty and receiving extra compensation, will be by commutation at the rate fixed by law at the time of such staff duty.—*Vol. 30, p. 680.*

1844. Subalterns employed in the Adjutant General's office, in the quartermasters' and subsistence departments, aides-de-camp, adjutants of regiments, and all others who receive additional compensation, are excluded from the additional ration under the law of March 2, 1827, (4 Stat., 227.)—*Vol. 5, p. 268.*

1845. No subaltern officer, who is in the performance of any staff duty for which he receives an extra compensation, is entitled to the additional ration provided for by the act of March 2, 1827, (4 Stat., 227.)—*Vol. 8, p. 325.*

1846. The duty of an adjutant is considered staff duty, and the additional ration provided for in the act of March 2, 1827, (4 Stat., 227,) is not to be allowed him.—*Vol. 12, p. 179.*

1847. The law of September 28, 1850, (9 Stat., 504,) giving additional rations to officers of engineers commanding posts, cannot be construed to operate longer than the fiscal year for which the appropriation was made.—*Vol. 19, pp. 341-342, 426-427.*

1848. Under the act of June 30, 1834, (4 Stat., 714,) medical officers are not entitled to the additional rations unless the service has been continuous. See decision of Secretary of War, October 16, 1854.—*Vol. 25, pp. 329-331, 419, 420.*

1849. Subalterns on bureau duty are not deprived of the additional ration granted by the act of March 2, 1827, section 1, (4 Stat., 227,) See Opinions Attorneys General, June 30, 1829, vol. 2, p. 213, in Mordecai's case.—*Vol. 5, p. 268; vol. 27, p. 192.*

III.—*Double Rations.*

1850. The act of August 23, 1842, (5 Stat., 512,) when it speaks of military geographical departments, has reference to such departments only as are established by the order or authority of the President of the United States.—*Vol. 12, p. 192.*

NOTE.—The act of August 3, 1861, (12 Stat., 290, sec. 19,) repeals the law of 1842, allowing double rations.

1851. The military departments established in Mexico are not considered as coming under the rule for the allowance of double rations.—*Vol. 13, p. 45; vol. 17, p. 101.*

1852. Fixed and permanent posts of the army are designated and established by the War Department. The decision of that department is therefore conclusive upon the accounting officers, upon the question whether a post is, or is not, within that class.—*Vol. 15, p. 178.*

NOTE.—See *Parker vs. United States*, 1 Peters, 297.

1853. Under the act of March 3, 1849, (9 Stat., 370,) making appropriations for the army, arsenals and armories are to be considered permanent or fixed posts, and their commanders entitled to double rations.—*Vol. 13, p. 310.*

NOTE.—But this allowance is confined to the fiscal year for which the act of March 3, 1849, (9 Stat., 370,) makes appropriation. Letter of Comptroller Parris to Secretary of War, April 5, 1849.

1854. The Paymaster General is not entitled to double rations, under the Army Regulations of 1841, par. 1251.—*Vol. 11, p. 82.*

1855. The Adjutant General being temporarily absent from duty, the officer who acts in his stead is regarded as a mere substitute for him, and the latter (Adjutant General) is entitled to the pay of the office, and the substitute to double rations, under the regulations of June 14, 1822, being double the rations which he receives by virtue of his own rank in the army.—*Vol. 9, p. 4; vol. 28, p. 289.*

1856. A "*permanent or fixed post*" must be garrisoned by at least one company of troops, to entitle the commanding officer thereof to the double rations provided by the 6th section of the act of August 23, 1842, (5 Stat., 513.)—*Vol. 12, p. 306.*

1857. Since the act of September 28, 1850, (9 Stat., 504,) engineer officers, commanding fixed and permanent posts of the army, though not garrisoned with troops, are entitled to double rations.—*Vol. 15, p. 408.*

NOTE.—But the allowance continued only for the fiscal year for which the appropriation was made.

1858. Officers of the engineer corps charged with the construction of fortifications, or having separate commands, are entitled to double rations. Officers of infantry are not embraced within the regulations of 1828, and therefore are not entitled to double rations while doing temporary duty under the engineer department.—*Vol. 5, p. 469.*

1859. Having charge of a survey for fortifications does not entitle the officer to double rations under the sixth article of the regulations of May 28, 1842, which requires the officer to have command of men engaged in the construction of fortifications.—*Vol. 10, p. 259.*

1860. Engineer officers employed on private works are not entitled to extra or double rations.—*Vol. 5, p. 169.*

1861. Engineers engaged in the superintendence of the construction of works of defence at permanent military posts are not considered as commandants of posts, nor are they liable to assume or be ordered on such duty.—*Vol. 19, pp. 450, 451-455.*

1862. Under the regulations of the War Department of May 18, 1833, double rations have not been extended to artillery officers on engineer duty, nor are they entitled to receive them, there being no law or regulations specifically granting them to such officers.—*Vol. 5, p. 343.*

1863. An ordnance storekeeper, not having military rank, cannot be considered as a commanding officer within the meaning of the act of March 16, 1802, (2 Stat., 133, sec. 5,) authorizing the allowance of double rations.—*Vol. 5, p. 257. Post, 1872.*

1864. When one officer relinquishes, and another officer assumes on the same day, the command of a double-ration post, the senior officer is entitled to the extra ration for that day.—*Vol. 10, p. 357.*

1865. Absence on leave, for a period not exceeding one month, by the commander of a double-ration post, does not deprive him of double rations during the interval.—*Vol. 15, p. 138.*

1866. An officer assigned to the command of a military department has the right to assume the command on his arrival at the limits of the department and before he arrives at the headquarters thereof.—*Vol. 17, pp. 239, 240.*

1867. The major and a lieutenant of the same regiment both charged for and received the commutation allowance for double rations for commanding a post. B, the lieutenant, was in actual command less than a month, A, the major and permanent commander, being absent on court-martial. The account of A was allowed and the charge of B disallowed.—*Vol. 22, pp. 212, 213.*

1868. *Seemle*, that the Adjutant General of the army is not entitled to double rations. The law of August 3, 1861, (13 Stat., 287, sec. 2,) limiting his pay and emoluments to that of a brigadier general, operates as a repeal of that part of the act of March 3, 1847, (9 Stat., 186, sec. 20,) allowing double rations to the Adjutant General.—*Vol. 25, pp. 253, 254.*

NOTE.—This decision of Comptroller Brodhead being adverse to the report of Colonel Townsend, assistant adjutant general, approved by the Secretary of War, the Comptroller requested that the matter be referred to the Attorney General for his opinion.

IV.—*Longevity Rations.*

1869. An officer of the army, transferred by appointment to the marine corps, is not entitled to additional rations for the time he has served in the army, under the law of July 5, 1838, (5 Stat., 256.)—*Vol. 10, p. 488.*

1870. By the 15th section of the act July 5, 1838, (5 Stat., 258,) every commissioned officer of the line or staff, except general officers, is entitled to receive one additional ration per day for every five years he may have served or shall serve in the army.—*Vol. 6, p. 560.*

1871. Military storekeepers attached to the purchasing department of the army are entitled to the longevity ration given by the act of July 5, 1838, (5 Stat., 256.)—*Vol. 8, p. 28.*

NOTE.—Military storekeepers, by the decision of the War Department, are not regarded as "commissioned officers of the staff or line of the army," and are, therefore, not entitled to longevity rations.—*Ante, 732.*

1872. Military and ordnance storekeepers are not officers of the line or staff of the army, and are not, therefore, entitled to "longevity" rations (one additional for every five years' service in the army) under the 15th section of act of July 5, 1838, (5 Stat., 258.)—*Vol. 26, p. 316. Supra, 1863.*

1873. In computing the longevity rations of an army officer, the service claimed for need not have been consecutive. But service in the marine corps, or as a cadet at West Point, cannot be regarded as service in the army.—*Vol. 6, p. 571; vol. 25, pp. 220, 503, 504.*

1874. Longevity rations must be calculated from the date of acceptance of the officer's commission.—*Vol. 31, pp. 156, 157.*

1875. He is entitled, under the law, to the benefit of all the time he may have served as a commissioned officer in the army, whether such service was consecutive or in detached periods.—*Vol. 25, pp. 220, 503, 504.*

1876. Service in a militia or volunteer corps is not service "in the army," and is not to be counted in allowance of longevity rations. An officer who served as a volunteer under the law of 1846, having been appointed to the regular army afterwards, computed his service as volunteer to enable him to claim longevity rations under the act of July 5, 1838, and May 13, 1846. Held, that the officer is entitled to the additional ration for every five years' service *only*, where such service has been rendered as *a commissioned officer of the army*, excluding service as a volunteer or marine. Acts of July 5, 1838, (5 Stat., 258, sec. 15;) March 19, 1836, (5 Stat., 7, sec. 1;) March 3, 1839, (5 Stat., 356, sec. 8;) May 13, 1846, (9 Stat., 10, sec. 9.)—*Vol. 19, pp. 432-434.*

1877. Assistant surgeons of volunteers, though appointed by the President, cannot count former service in the regular army to entitle them to longevity rations. Act of July 5, 1838, sec. 15, (5 Stat., 256.)—*Vol. 25, p. 690.*

1878. An officer of the regular army serving in the volunteer force is not thereby precluded from receiving longevity rations. Case of Major Webster.—*Vol. 25, pp. 503, 504.*

1879. When an army officer is retired under the act of August 3, 1861, (12 Stat., 289, sec. 15,) with one year's pay and allowances, he is entitled to service rations, usually termed longevity rations, under the conditions prescribed by the 15th section of the act of July 5, 1838, (5 Stat., 258.)—*Vol. 27, p. 95.*

B.—OF THE MARINE CORPS.

V.—*Rations.*

1880. When a marine is detached on duty under orders of his commanding officer, and it is impracticable for him to carry his rations with him, he may be allowed the actual expenses incurred, not exceeding 75 cents per day, under Army Regulations, paragraph 216, edition 1861.—*Vol. 25, p. 65.*

1881. Under the thirty-fifth section of the act of July 28, 1866, (14 Stat., 337,) officers of the marine corps who are not furnished with quarters in kind or by commutation, are entitled to a continuance of the increased commutation of rations for one year from July 28, 1866.—*Vol. 29, p. 492.*

1882. When a marine is detailed for duty as provost marshal of a naval court-martial sitting at Washington, he must draw his rations in kind; and if inconvenient to do so, he must commute at cost price, in accordance with the General Orders of the Navy Department of February 24, 1851.—*Vol. 15, p. 153.*

1883. Officers of the marine corps, serving on board of public vessels under orders, are entitled to commute their subsistence at 50 cents per ration for the time specified in the act of July 28, 1866, (14 Stat., 336, sec. 25.)—*Vol. 30, pp. 118, 119.*

VI.—*Double Rations.*

1884. Officers of the marine corps, entitled to double rations, are not to be deprived of them when on leave of absence from their posts for a period less than 30 days, or when temporarily absent on courts-martial or other duty for a longer period.—*Vol. 9, p. 561.*

1885. The station at Washington, including the navy yard, constitutes but one command. Double rations cannot, therefore, be allowed to more than one officer of the marine corps, as commandant of that post.—*Vol. 13, p. 554; vol. 16, pp. 119, 121, 157.*

1886. It was held that the lieutenant colonel in command of the marine corps, during the time when the colonel commandant was serving with the army in Mexico, was entitled to double rations.—*Vol. 12, p. 80.*

1887. The General Orders of the Navy Department, of July 30, 1841, and December 11, 1849, do not recognize more than one separate post or command at any of the marine stations. Navy yards belong to the permanent posts, and but one marine officer at a permanent post is entitled to double rations, or to the other allowances usually made to commanders of separate posts.—*Vol. 15, p. 55.*

1888. The adjutant and inspector, quartermaster and paymaster, of the marine corps, have no stronger legal claims to double rations than the like officers of the army who may be stationed at Washington merely to perform the appropriate duties of their respective offices.—*Vol. 6, p. 467.*

1889. A commandant of a post garrisoned by less than a company would not be entitled to the allowance of double rations.—*Vol. 16, pp. 119, 301.*

1890. Allowances, as at a "fixed and permanent post," are to be made only when the post has been so announced in orders.—*Vol. 16, p. 301.*

1891. The superintendent of the recruiting service in the marine corps is not entitled to double rations. Act of August 23, 1842, (5 Stat., 513, sec. 6.)—*Vol. 19, pp. 237, 238.*

VII.—*Longevity Rations.*

1892. Where an officer has been dropped from the rolls and subsequently restored, the intervening time cannot be computed in making up longevity rations. Major Ward Marston's case.—*Vol. 17, pp. 85, 86.*

1893. A marine officer, who held a commission in the army prior to entering the marine corps, is not entitled, in computing the longevity ration, to add the time he so served in the army.—*Vol. 12, p. 395; vol. 16, p. 567.*

1894. Under the fifth section of the act for the better organization of the marine corps, passed June 30, 1834, (4 Stat., 713,) officers of the marine corps are entitled to receive one additional ration per day for every five years' service.—*Vol. 6, pp. 560, 570.*

1895. The act approved July 5, 1838, (5 Stat., 258, sec. 15,) granting an additional ration to officers of the army for every five years' service, embraces the officers of the marine corps.—*Vol. 6, p. 557.*

1896. In computing longevity rations for officers of the marine corps who have been transferred from the volunteer naval service, the time during which they were commissioned officers only in the volunteer service will be counted.—*Vol. 30, pp. 646, 646.*

OF THE NAVY.

VIII.—*Rations.*

1897. Officers of the navy while attached to a vessel for sea service, whether employed in the coast survey or the navy proper,

are entitled to their rations while temporarily doing the duty of the vessel on shore.

This rule applies also to clerks allowed by the Navy Department to chiefs of hydrographical parties of the coast survey while in actual command of vessels at sea.—*Vol. 14, p. 399.*

1898. The officers of a United States ship "wrecked, lost, or destroyed," are entitled to their rations till detached by the Navy Department, notwithstanding the proviso in the Navy Appropriation act approved March 3, 1851, (9 Stat., 621,) as the act of April 23, 1800, (2 Stat., 52, sec. 3,) continues the command, pay, and emoluments as before to the officers and crew who performed their duty.—*Vol. 15, p. 68.*

1899. No person employed upon a duty which does not give a ration under previous laws and regulations, will be entitled to one by virtue of the law of March 3, 1851, (9 Stat., 621.)

1900. The act of March 3, 1851, (9 Stat., 621,) is permissive merely, and is not construed to allow rations to naval officers not previously entitled to receive them by law or regulation, and rations were therefore not allowed to officers on board of receiving ships.—*Vol. 30, p. 135.*

1901. "Officers' attendants," within the meaning of the laws, are the cabin and wardroom stewards and cooks, and such persons belonging to vessels of the navy as attend to the wants of commissioned and warrant officers, and who habitually receive their subsistence from the messes of such officers.—*Vol. 14, p. 333.*

1902. Naval officers serving on board mail steamers, in which suitable accommodations in regard to subsistence were furnished by contractors, are not entitled to navy rations. Act of March 3, 1847, (9 Stat., 187, sec. 3.)—*Vol. 20, pp. 297, 298.*

1903. Although the spirit part of the navy ration is habitually commuted, yet it is not a part of an officer's pay, but of his rations; and he is not entitled to any part of his ration when he is not on duty, which, by law, carries with it the right to a whole one.—*Vol. 27, p. 402.*

RECEIPTS.

1904. The receipts of all salaried officers taken for payments and filed as vouchers, whether the salaries exceed \$600 or not, should be taken in full. The papers in each disbursing officer's account will show that he has retained or collected the amount of tax required. (Section 86, Internal Revenue act.) A voucher from the Commissioner of Internal Revenue must be filed with each account by the disbursing officer, showing that he has paid over the various sums collected.—*Vol. 25, pp. 257, 258.*

1905. Receipts in blank are not according to army regulations, and not admissible as vouchers.—*Vol. 21, p. 140.*

1906. The receipts which are annexed to accounts should express

the sums paid in words written out in full, and not by figures, and they should state the name of the person from whom, and the date when, the money is received.—*Vol. 3, p. 236.*

1907. When the amount of a certificate contains two or more of these items—of pay and bounty—and all cannot be legally paid to the heirs of the deceased, the receipt should be only for the actual amount paid.—*Vol. 30, pp. 397, 398.*

1908. Receipts signed, not by the parties receiving the money, but by the witnessing clerk, and being without any marks made by the men, are of no validity whatever. But the disbursing officer may receive credit for such payments on furnishing satisfactory evidence that the men actually received the money.

When money is paid to persons unable to write their names, they must make their marks with their own hands, and they should be witnessed by the proper officer.—*Vol. 28, p. 139.* WITNESS, 2266, 2267, 2268; CLOTHING, 486; EVIDENCE, 809, 814.

RECRUITING SERVICE.

1909. Officers in command of recruiting detachments, of unassigned men, consisting of a numerical force equal to a full company, are entitled to receive \$10 per month additional pay, under the provisions of the act of March 2, 1827, (4 Stat., 227.)—*Vol. 6, p. 398.*

1910. The uniform practice has been to allow to officers stationed on recruiting service \$10 per month only for quarters, except at commutation posts.—*Vol. 6, p. 166.*

1911. It was held that the expenses of recruiting the volunteer regiments for the Mexican war might be paid from the appropriation for "expenses of recruiting."—*Vol. 12, p. 39.*

1912. Where an officer claimed pay for recruiting services under a provisional appointment, authorized by General Orders No. 131, 1864, held that payment is authorized only in case a full company is recruited.—*Vol. 28, p. 286.*

RE-ENLISTMENT.

1913. A soldier who, by his contract of enlistment, agrees to serve for five years, and who, from any cause, is sooner discharged and re-enlists, has no claim for an increase of pay predicated on length of service, as an element in his value as a soldier, until the expiration of the full period of five years.—*Vol. 26, p. 162.*

1914. A soldier honorably discharged from the service in the army who may have enlisted in the marine corps within the time prescribed by law for the re-enlistment of marines, is entitled to all the benefits he would have obtained had he re-enlisted in the army. And the provisions of the act of August 14, 1854, (10 Stat., 575, sec. 3.) as to soldiers re-enlisting, having been made applicable to the

marine corps by the act of August 5, 1854, (10 Stat., 586,) both services in this regard are to be held as one.—*Vol. 19, pp. 337-339.*

1915 Those who have been honorably discharged from one service and enlist in the other within the time prescribed by law for that purpose, are regarded as having been continuously in the service, and entitled to all the advantages it confers under the laws regulating this subject.—*Ibid.* SUBSTITUTE, 1956.

REGULATIONS.

1916. By the act of June 30, 1834, (4 Stat., 713, sec. 2,) the marine corps is at all times subject to and under the laws and regulations established for the government of the navy, except when detached for service with the army.—*Vol. 6, p. 467.*

RENT.

1917. In a claim for use and occupancy of lands for military purposes, the essential elements in the determination of the claim are the time the premises were used and occupied, the worth of such use and occupation to the United States, and the value of the property to the tenant if he had been left in quiet possession.—*Vol. 26, pp. 156-158.*

1918. Where rent was due from the government for the use of land which had been conveyed to B and others, as *cestuis que trust* of an association, for the purpose of a cemetery, and by the rules of the association the members were authorized to fill vacancies in the board of trustees, held that although but two of the trustees survive, they are, notwithstanding the full number designated in the deed, vested with the power to fulfil the duties of the board *ad interim*; and the acts of the chairman of the board for the legitimate purposes as enumerated in the deed are the acts of all.—*Vol. 25, pp. 753, 754; vol. 26, p. 3.* EXECUTORS AND ADMINISTRATORS, 846.

1919. In a claim for the use of land occupied for military purposes evidence must be produced showing that there are no incumbrances upon the estate of such a description as to be a lien upon the rents.—*Vol. 29, p. 116.*

1920. In a claim for rent, on account of the use and occupation of a building seized by the United States military authorities at Richmond, shortly after the evacuation of that city, and before the close of the war, held that the action of the government must be treated *jure belli*, that civil war suspends, in an insurrectionary State, the act of March 3, 1817, sec. 2, (3 Stat., 366,) relating to the settlement of claims, that not only public law, but the laws of Congress, forbid the payment of the claim; see acts of July 4, 1864, (13 Stat., 381,) February 21, 1867, (14 Stat., 397,) August 6, 1861,

(12 Stat., 319,) and 21st general regulation, Army Regulations, p. 512.—*Vol. 31, pp. 79, 80, 81.*

1921. Where the government permitted certain buildings to be erected on land owned by itself, and afterwards, because of military necessity, took possession and used the premises, held that, because the government owned the land, and claimants, by the terms of their leasehold, were bound to remove their buildings when required by government, the rights of claimants were not thereby determined as to rent for use, when possession was taken by the military authorities, and that a just compensation, *propter rem ipsam non habitam*, should be made.—*Vol. 28, p. 165.*

1922. The law of April 21, 1808, (2 Stat., 484,) is not construed to prevent a member of Congress from receiving the rents of real estate in the possession and use of government, where it appeared that he became the owner of the fee subsequent to the occupation by the government. (*Vide* Opinions of Attorneys General of June 1, 1842; Vol. 4, p. 47, and August 9, 1809; Vol. 5, p. 697.)—*Vol. 29, p. 73.*

REPRESENTATIVE RECRUITS.

1923. Representative recruits are entitled to the same bounties as other recruits enlisted at the same time, and for like periods of service.—*Vol. 28, p. 440.*

1924. Representative recruits have the status of volunteers and are entitled to bounty under the act of July 4, 1864, (13 Stat., 379.)—*Vol. 30, p. 86.*

REQUISITION.

1925. Pay requisitions cannot be furnished to officers for cost of provisions, until their accounts have been settled in the Second Auditor's office, when the proper credit will be made by counter requisitions, emanating from the Third Auditor's office.—*Vol. 20, p. 88.*

RETIRED OFFICERS.

1926. Officers retired under the act of August 3, 1861, (12 Stat., 289, secs. 15, 16, 17,) are entitled to pay proper of the highest rank held by them, and four rations per day; but when assigned to duty by the President, to full pay and emoluments. See act of July 17, 1862, (12 Stat., 596, sec. 12.)—*Vol. 24, pp. 392, 393, 608, 609.*

1927. The compensation of a retired officer commences from the date of his retirement, not from the date of any decision giving a construction to the law.—*Vol. 27, p. 95.*

1928. Under the 17th section of the act of August 3, 1861, (12 Stat., 290,) providing that under certain specified circumstances an officer may, at the discretion of the President, be wholly retired from

the service with one year's pay and allowances, it was held that, according to the construction of the language of the statute, the right of the officer to receive the year's pay and allowances became vested immediately upon his retirement.—*Vol. 26, pp. 176, 209. PAY, 1068; FORAGE, 591.*

1929. Officers of the army and marine corps who may be retired under the act of August 3, 1861, (12 Stat., 289, sec. 17,) and July 17, 1862, (12 Stat., 596, sec. 12,) and who, at the time of being placed on the retired list, are in the performance of duty by competent authority, which duty is not interrupted by their retirement, are entitled to a continuation of their full pay until they are relieved from duty.—*Vol. 25, p. 290.*

1930. An officer retired under the act of August 3, 1861, (12 Stat., 289, sections 15 and 17,) was ordered to active duty prior to the passage of the act of July 17, 1862, giving full pay on assignment to duty. (12 Stat., 596, sec. 12.) Held, that the law not being retroactive he was only entitled to the retired pay prior to its enactment, as the act of August 3, 1861, provided no increase of pay for a retired officer when ordered on duty.—*Vol. 30, p. 159.*

1931. An officer of the regular army, retired on account of wounds received in battle, retires with the full rank held by him when the wounds were received; and when assigned to duty he is entitled to the full pay and allowances of his grade in the regular army, regardless of what rank he may have held in the volunteers when the wounds were received. See acts of July 17, 1862, sec. 12, (12 Stat., 596;) August 3, 1861, sec. 16, (12 Stat., 289;) July 28, 1866, sec. 32, (14 Stat., 337;) Opinions of Attorneys General, October 31, 1867.—*Vol. 31, pp. 4, 5, 296.*

NOTE.—But the Attorney General, by his opinion of April 14, 1868, holds that a retired officer when assigned to active duty, is entitled to the full pay and allowances of the grade held by him when wounded, and upon which he was retired.—*Vol. 31, p. 29.*

SALVAGE.

SEE *General Average—Freight.*

1932. When a vessel is stranded by accident, and it and the cargo are saved by the exertions of the agents of the shippers, then the expenses attending the salvage are properly chargeable against the freight and owners, and not as general average.—*Vol. 19, pp. 426, 466.*

1933. If a vessel is wrecked by the perils of the sea, and the cargo belonging to the United States is saved by the master, he may properly claim remuneration for any extraordinary expenses necessarily incurred in thus securing and saving the public property intrusted to his care.—*Vol. 12, p. 156.*

1934. Salvage is due to all who assist in securing the property saved. In some cases the court determines the amount in gross, leaving it to the salvors to apportion it among themselves. In others, where the salvors apply separately, the court makes the apportionment.—*Vol. 8, p. 397.*

1935. In case of four boxes of brass guns saved from the ship Saxon, and delivered by the wreckers to a United States officer, on his receipt. Held, that their claim for \$535 was a fair equivalent for services, as the salvage charges of the ship had been duly examined by the board of underwriters and insurance companies.—*Vol. 20, p. 459.*

1936. Where derelict timber was found in the possession of the salvors, and appropriated to military use, the costs and charges of the salvors, *pro opere et labore*, were allowed.—*Vol. 29, p. 87.* FREIGHT, 884.

SEAMEN'S WAGES.

1937. If, in the course of a voyage, there be a total loss of the ship, the wages of the seamen cannot be claimed subsequent to the breaking up of the voyage. There is no law requiring the ship-owner to return the captain and crew to their home port.—*Vol. 12, p. 91.*

1938. Where a vessel is lost at sea, the wages of the seamen are lost with the vessel.—*Vol. 12, p. 136.*

SECRETARY OF THE NAVY.

1939. Expenses of naval officers for postage, carriage-hire, servants' fees, &c., cannot be paid without the sanction of the Secretary of the Navy.—*Vol. 19, pp. 468, 469.* POSTAGE, 1704; PRIZE MONEY, 1737.

SECRETARY OF WAR.

1940. The Secretary of War having decided that the board organized to examine officers of the 1st army corps, is not a court-martial, court of inquiry, or a military commission, the recorder of the board cannot be paid in conformity with paragraph 1138, Army Regulations.—*Vol. 28, p. 291.* ARMY REGULATIONS, 98; PAY, III, 1403; TRAVEL PAY, I, 2104, 2109.

SERVANTS.

1941. The right to a servant, and to fuel for him, is one of law and regulation; but an officer has no legal claim for allowance for a private servant unless he actually keeps one in service.—*Vol. 13, p. 46.*

1942. Where officers in the field under authority of General Rosecrans conscripted negroes for employment, and, among other things, as servants to officers, and they were ordered to be paid out of the funds of the quartermaster's department. Held, that payment could not be made from the appropriations of the quartermaster's department. Special acts alone authorize the President and heads of departments to transfer a part of one appropriation to another. Acts of March 3, 1809, (2 Stat., 535, sec. 1;) May 1, 1820, (3 Stat., 567;) July 2, 1836, (5 Stat., 78, sec. 2;) July 17, 1862, (12 Stat., 594, sec. 3.) Officers' servants are estimated for and appropriated for under an entirely different head.—*Vol. 25, pp. 335, 336.*

1943. No allowance will be made to officers for servants casually employed at hotels, &c., while such officers are travelling.—*Vol. 17, p. 102; vol. 19, p. 124.*

1944. An officer is entitled to pay for servants only when they are actually employed. Acts of April 24, 1816, (3 Stat., 299, sec. 12;) July 17, 1862, (12 Stat., 594, sec. 3.) Army Regulations, par. 288, ed. 1825.—*Vol. 16, p. 148.*

NOTE.—The act of August 6, 1861, (12 Stat., 326,) increasing soldiers' pay from \$11 to \$13 per month, having been construed to authorize officers to be paid for servants an amount equal to the cost of a soldier of that arm of the service to which the officer belonged, the act of July 17, 1862, (12 Stat., 594, sec. 4,) forbids such construction. Modified by act of March 3, 1865, and pay for servants made same as privates. Under the proviso of the act of June 15, 1864, (13 Stat., 127,) if any officer in the regular or volunteer forces shall employ a soldier as a servant, such officer shall not be entitled to any pay or allowances for a servant or servants, but shall be subject to the deduction from his pay required by the law of July 17, viz, the full amount paid by government on account of the soldier.

1945. When an officer entitled to a servant takes one from the army, he is not entitled to the pay and clothing of a private servant. See acts of July 6, 1812, (2 Stat., 785, sec. 5,) and July 17, 1862, (12 Stat., 594, sec. 3,) providing that officers employing soldiers as servants shall deduct from their own pay the full amount paid by government to the soldier.—*Vol. 22, p. 420.*

See act of March 3, 1865, on this subject.

1946. Officers are only entitled to the actual cost of transportation for servants when travelling on orders for exchange of station, or when from wounds or disability received in the service they require their services.—*Vol. 30, p. 297.*

1947. Mileage accounts which have been settled should not be re-opened to allow actual cost of transportation of servants.—*Vol. 30, pp. 681, 682.*

1948. By article 77, paragraph 984, of General Regulations for the Army, of 1841, a general or field officer when travelling on duty without troops, will be entitled to transportation for one servant on

certifying that the servant actually accompanied him on his journey.—*Vol.* 9, *p.* 633.

1949. Constructive transportation of a servant can in no case be allowed. Officers of the volunteer regiments raised for service in the Mexican war are subject to the same rule on this subject that is applied to those of the regular army.—*Vol.* 15, *pp.* 298.

1950. Officers are not entitled to commutation of travel-pay for servant. Acts of March 3, 1799, (1 Stat., 755, sec. 25;) March 16, 1802, (2 Stat., 137, sec. 24;) January 11, 1812, (2 Stat., 674, sec. 22;) January 29, 1813, (2 Stat., 796, sec. 15;) June 18, 1846, (9 Stat., 18, sec. 10;) July 22, 1861, (12 Stat., 270, sec. 5;) March 19, 1836, (5 Stat., 7, sec. 3.)—*Vol.* 15, *p.* 298; *vol.* 24, *pp.* 291–293.

1951. Officers are not entitled, under the first section of the act of March 3, 1865, (13 Stat., 487,) to receive \$16 a month for their servants' pay from the date said amount was allowed by Congress for private soldiers, by the act of June 20, 1864, (13 Stat., 144, sec. 1.)—*Vol.* 28, *p.* 174.

1952. Officers are not allowed back pay for the amount of difference in servants' pay, &c., between the \$16 per month allowed by the act of March 3, 1865, and that previously allowed. The act of March 3, 1865, (13 Stat., 487,) not being construed as retroactive, but in force only from and after its passage. See 27th section, *ibid.*—*Vol.* 28, *p.* 274.

1953. The increase of the pay of officers' servants dates from the passage of the act of March 3, 1865, (13 Stat., 487,) which is not retroactive, the 27th section of that law providing that it shall take effect from and after its passage.—*Vol.* 28, *p.* 190.

NOTE.—That this construction of the act is just is rendered certain by the proceedings of the Senate, to which body the bill was originally reported without the proviso as to the date of its operation, and the bill was amended in order to restrict its effect to the date of its passage and thereafter; and also by the 3d section of the act of March 2, 1867, (14 Stat., 437,) which declares that the act of June 20, 1864, shall not be so construed as to increase the emoluments of officers, and that the 1st section of the act of March 3, 1865, shall not be retroactive in its operation.

1954. The name and description of an officer's servant must be given to enable him to draw pay therefor.—*Vol.* 18, *p.* 415.

1955. The law of April 24, 1816, section 12, (3 Stat., 298, sec. 12,) making allowances to officers for private servants "actually kept in service," was intended, in my judgment, for servants personally attending upon the officers, and not for those who might be employed in the officers' families or upon their plantations. Decision Second Comptroller, January 16, 1864. *Per contra*, Judge Advocate Holt, October 24, 1862, gives it as his opinion that the servants of an officer must not necessarily attend upon his person, but may perform that duty at his house or elsewhere.—*Vol.* 25, *p.* 678.

NOTE.—The practice obtains to allow for servants employed in personal attendance at home or elsewhere.

SUBSTITUTE.

SEE *Representative Recruit.*

1956. A soldier who re-enlists within the time prescribed by law, is entitled to increase of pay for re-enlisting; but he cannot be regarded as a substitute for another.

1957. An able-bodied man who is accepted as a substitute for another, and enlists into the military service, is entitled to all that his principal would have been entitled to had he entered the service, and no more. See act of July 1, 1864, (13 Stat., 342, sec. 4.) Martin Scala's case.—*Vol. 27, pp. 122, 123.* RE-ENLISTMENT, 1914.

1958. A soldier who furnishes a substitute, and is discharged from service, is not entitled to the three months' extra pay or land bounty; the substitute is entitled to both.—*Vol. 14, p. 391.*

1959. A soldier who is discharged before the expiration of his term of service, on procuring a substitute, is not entitled to the retained pay. The bounty, land, and retained pay go to the substitute.—*Vol. 10, p. 243.*

1960. A man is a representative substitute only when both principal and substitute are not liable to draft, and if the principal be liable to draft, and enlists a substitute, or puts one in before the draft, no bounty is due.—*Vol. 29, p. 98.*

SUITS.

SEE *Judgment of Court.*

1961. The act of January 25, 1828, (4 Stat., 246,) points out the only mode by which a claimant can require a suit to be instituted against him, for the settlement, judicially, of questions arising between him and the accounting officers. If an officer is in arrears, and his pay be stopped under that act, he then has a legal right to demand a suit. But if he is not in arrears, no suit can be brought by the United States with or without his consent.—*Vol. 9, p. 90.* ACCOUNTS, 22; JUDGMENT OF COURT, 1005.

1962. The amount only of the debt sued for should be covered into the treasury to the credit of the original debtor and of the appropriation. The interest charged under the act of March 3, 1797, (1 Stat., 512,) should be covered in as miscellaneous receipts, and the costs on account of expenses of United States courts, and both as moneys not appropriated. Letter to Fourth Auditor.—*Vol. 24, pp. 125, 126.*

1963. Criminal suits cannot be prosecuted by the United States, unless the indictment or information be found or instituted within two years from time of offence, except in capital cases, and then the indictment for same must be found by a grand jury within three years. Persons fleeing from justice are not within the limitation. See act of April 30, 1790, (1 Stat., 112.)—*Vol. 27, p. 195.*

NOTE.—The act of March 3, 1825, (4 Stat., 115,) limits prosecutions, in certain cases, to five years; and the act of July 31, 1861, (12 Stat., 284,) repeals the law of 1790, in respect of capital offences.

The act of June 11, 1864, (13 Stat., 123,) suspends the limitation of actions where, in consequence of the rebellion, process cannot be served.

1964. An officer in service cannot demand that the United States shall sue him to recover from him money which he has received, and to which he was, in the opinion of the accounting officer, clearly not entitled.—*Vol. 17, p. 443.* DISBURSING OFFICERS, I, 742.

SURETIES.

1965. Sureties on the bonds of a purser are not chargeable with funds received and disbursed by him as acting navy agent.—*Vol. 20, p. 477.* BONDS, 34.

SURGEON.

I. ARMY.

II. NAVY.

I.—ARMY.

1966. Surgeons who attended the volunteer regiments until army surgeons reported for duty, have not been considered as officers of the army, but civilians temporarily engaged, and consequently are not entitled to the three months' extra pay provided for by the act of July 19, 1848, (9 Stat., 248.)—*Vol. 14, p. 202.*

1967. Surgeons who attended the volunteer regiments in the war with Mexico, as a part of their staff, but were not appointed by the President as provided by law, were not officers of the army, and therefore not entitled to the three months' extra pay.—*Vol. 15, p. 171.*

1968. An assistant surgeon, discharged under the act of August 23, 1842, (5 Stat., 512,) is entitled to the three months' extra pay provided for by said act.—*Vol. 9, p. 406.*

1969. A person borne on the rolls of a regiment as hospital steward, and mustered and paid as such, cannot subsequently be allowed pay as acting assistant surgeon.—*Vol. 15, p. 364.*

1970. In case of Doctor Webster, who contracted to serve for the pay of assistant surgeon, of less than five years' service, held,

that he was entitled to the increased pay authorized by act of February 21, 1857, (11 Stat., 163,) which took effect before the date of his contract, though passed after that date.—*Vol. 20, p. 200.*

NOTE.—See Opinions Attorneys General, (July 14, 1847, vol. 4, p. 603,) that a surgeon dismissed and restored with rank from original date is not entitled to back pay for intervening time, and his rate of pay must be fixed by computing his time of service from the date of his last commission.—*Du Barry's case.*

1971. A private physician employed in the army under contract, is not entitled to three months' extra pay under act of July 19, 1848, (9 Stat., 248.)—*Vol. 16, p. 197.*

1972. When a surgeon is not regularly mustered into the service, but duly commissioned by the governor of the State, and the proof of service is the affidavit of fellow-officers, his name borne on the muster-rolls for pay, the record of payment thereon, and the order of his dismissal by the War Department, he is entitled to pay up to the day of dismissal.—*Vol. 25, pp. 756, 757.*

1973. A surgeon under contract to render services at a monthly rate, is paid for the actual number of days in the month. His pay commences when he enters upon duty. Both the day of entering upon duty and the day of ceasing to perform duty are not to be reckoned; *only one* day is counted.—*Vol. 23, pp. 143-145.*

1974. A surgeon mustered in for three years, and having been continued in actual service by successive orders from competent authority to a certain day, is entitled to pay and allowances to that day, notwithstanding his regiment is already mustered out.—*Vol. 25, p. 558.*

1975. Pay was not allowed to a surgeon on leave subsequent to the date of his muster out, notice thereof having been received some time after such date. (See General Orders No. 103, 1864.)—*Vol. 28, p. 648.*

1976. A surgeon duly commissioned by the governor of a State, and performing duty in the service of the United States under orders from competent authority, although not mustered in, is entitled to pay from the date he entered upon that duty to the date of his discharge by special order of the Adjutant General's office.—*Vol. 25, pp. 602, 603.*

1977. A was appointed surgeon of the regiment by the colonel commanding a regiment called into service by the governor and accepted by the United States, and alone served until the regiment was mustered out. In consequence of the nature of his service, A was unable to be mustered, and was not regularly commissioned, although recognized by the governor of the State as surgeon and faithfully performing the duties of the office. Held, that the recognition by the governor, and the proof of actual service and appointment by the colonel, may be considered in this case equivalent to commission and muster, so far as pay is concerned.—*Vol. 25, p. 745.*

II.—NAVY.

1978. The increased pay of a surgeon in the navy, ordered to report for duty on a future day designated in the order, will commence on that day, if he shall so report.—*Vol. 5, p. 525.*

1979. A surgeon in the navy, returning from a foreign station to the United States in charge of sick seamen, is entitled to the pay which he would have been entitled to at a hospital.—*Vol. 8, p. 566.*

1980. The "duty pay" of surgeons commences at the date of the acceptance of their orders. All others, including passed assistant surgeons, are allowed increased pay only from the time of leaving their domicils or stations to enter upon the duty assigned them.—*Vol. 8, p. 567.*

NOTE.—The act of June 1, 1860, (12 Stat., 25,) increases the pay of surgeons in the navy.

1981. Surgeons acting on boards of examination are entitled to the same pay as when stationed at yards, hospitals, &c.—*Vol. 7, p. 435.*

1982. An assistant surgeon, previous to the act of June, 1844, was allowed the pay of surgeon, when, by the regulations of the department, the complement of medical officers for any particular class of vessels was a surgeon and assistant surgeon, and the whole duty on board a vessel of that class was performed by the assistant surgeon.—*Vol. 6, pp. 372, 383, 416, 445.*

NOTE.—Secretary Dobbin decided, April 26, 1854, that the pay of assistant surgeons ought to commence from the date of the approval of the report of the medical board of examination which acted on their cases.

1983. Assistant surgeons and assistant engineers, when absent on duty at the time the classes to which they respectively belonged were examined and commissioned, are entitled to pay from the date of the commissions granted to other members of the classes.—*Vol. 16, p. 241.*

NOTE.—The act of March 3, 1835, (4 Stat., 755,) applies to assistant surgeons, and the act of March 3, 1851, (9 Stat., 625, sec. 3,) includes assistant engineers.

1984. Assistant surgeons of the navy examined for promotion by order of the department are entitled to their increased pay from the date when the report of the examining board is approved by the department.—*Vol. 30, pp. 570, 577.*

1985. A surgeon of the fleet having been appointed, is entitled to pay as such after he leaves the squadron and until detachment.—*Vol. 27, p. 198.*

1986. The right of a surgeon to the pay of fleet surgeon does not depend upon his being the senior surgeon of the squadron, nor upon his having performed the duties of fleet surgeon, but upon the question whether or not he received an appointment to that grade under the act of May 24, 1828, (4 Stat., 313, sec. 2.)—*Vol. 7, p. 440.*

1987. See letter of Comptroller Brodhead to Secretary McCulloch, dated December 26, 1865, in relation to the allowance of difference of pay to navy surgeons, &c., under the act of July 16, 1862, (12 Stat., 586,) for a time when they were entitled to it, and in certain cases making payments by what are termed certificates, signed by the Auditor and Comptroller instead of by requisition. *Vol. 29, pp. 573, 574.*

1988. The date of the written acknowledgment of the receipt of an order, must be taken as the date of acceptance of that order; and from that day the increased pay of a surgeon commences. Decision Second Comptroller, April 1, 1836. See Opinions of Attorneys General, April 10, 1837, vol. 3, p. 198.—*Vol. 27, p. 198.*

1989. Since the act of May 24, 1828, (4 Stat., 313,) no assistant surgeon in the navy can receive the pay of a surgeon in any case.—*Vol. 27, p. 198.*

1990. Pay of surgeon in the navy, under any order for his services, commences from the date of his acceptance of such order. Rules of Fourth Auditor, May 24, 1855; approved by Second Comptroller.—*Vol. 22, p. 580.*

SUTLER.

1991. The United States are not responsible for the money collected for the sutlers by the paymasters under the 196th paragraph of the Army Regulations of 1841. The paymaster acted in such cases exclusively as the sutler's agent, and it is not in any manner incumbent on the United States to guarantee the payment of the debt, or become responsible for the fidelity of the paymaster.—*Vol. 9, p. 422.*

NOTE.—Acting Sutler C. A. Dougherty was permitted to sell sutler's stores to a battalion of regulars stationed near his place of business. He had no regular appointment, yet the commanding officer gave him the privilege of sutling, with the understanding that his interest should be protected when payment should be made to the soldiers. Held, that as the prices charged did not exceed the regular rates, and the sums charged severally to the soldiers did not exceed the legal limit, and had been properly charged on the roll as required by the law of March 19, 1862, (12 Stat., 372,) payment should be made of the amount of his claim, as an exception to the general rule on the subject.

1992. A written acknowledgment of a soldier that he is indebted to the sutler in a certain amount was considered as sufficient, under the Army Regulations of 1841, to authorize the deduction of the amount stated to be due the sutler from the pay of the soldier, and the payment of the same to the sutler.—*Vol. 11, p. 18.*

1993. A sutler is not entitled to receive the amount due a soldier at the time of his discharge, unless he has power to give a receipt therefor.—*Vol. 13, p. 141.*

1994. When a recruit is rejected, no part of his wages could be properly paid to the sutler while the Regulation of 1841 was in force, until all dues were refunded to the United States; and the same principle governs in the case of minors discharged on *habeas corpus*.—*Vol. 8, p. 298.*

1995. By the 198th paragraph of the Army Regulations of 1841, debts due the sutler from a soldier at the time of his desertion were to be settled by the paymaster out of the arrearages due the soldier at the time of his desertion; but the retained pay could not be included in the arrearages, that not being due under the 16th section of the act of July 5, 1838, (5 Stat., 258,) until the expiration of the soldier's term of service.—*Vol. 9, p. 399.*

1996. So much of the pay of a soldier as is required to satisfy the certified claims of the sutler and laundress could not be diverted from that object by a court-martial, while the Regulations of 1841 remained in force.—*Vol. 10, p. 94.*

1997. In the case of a deserter who has been apprehended, the paymaster was not authorized, under the Regulations of 1841, to pay the sutler's bill out of the wages due the deserter, until he should have first paid all the expenses incurred in the apprehension of such deserter.—*Vol. 8, p. 298.*

1998. The practice of paying debts certified to be due the sutler of a military post, out of the arrearages due to the indebted soldier at the time of his desertion, is expressly prohibited by the 11th section of the act of March 3, 1847, (9 Stat., 185, sec. 11.)—*Vol. 12, p. 46.*

1999. Since the act of March 3, 1847, (9 Stat., 185,) a sutler can have no lien upon the pay of a soldier under any circumstances. Where soldiers have deceased, therefore, with pay due them from the government, and indebted to the sutler, it would be a violation of law to allow the claim of the sutler out of the pay due the men at the treasury. And still less can accounts due from men who have deserted be allowed, because desertion works an entire forfeiture of all pay due at the time it takes place.—*Vol. 15, p. 377.*

2000. Where necessary supplies were furnished to a company of volunteers at the solicitation of the officers acting as agents for the men, and upon an agreement that the amount was to be deducted from the pay of the company, and the stoppages were accordingly made on the rolls, with the approval of the commanding general, and the deduction made from the pay of all the men who were paid by the paymaster, the same deductions were made at the treasury from the arrearages due the remainder of the company and paid to the person who furnished the supplies. Those persons are not sutlers within the meaning of the act of 1847, nor is the payment to them such an one as is prohibited by that act.—*Vol. 15, p. 233.*

2001. No payments will hereafter be made to any sutler from the pay of deceased or deserted soldiers in discharge of any lien which such sutler may be supposed to have upon the pay of said soldiers.

Act of March 3, 1847, (9 Stat., 185, sec. 11.) See, also, decision of Secretary of War, of March 19, 1853.—*Vol. 16, p. 126.*

2002. Since the passage of the act of March 3, 1847, (9 Stat., 185, sec. 11,) a sutler cannot, by furnishing supplies to a soldier, acquire a lien on any part of his pay, nor a right to appear at the pay table to receive the soldier's pay from the paymaster.—*Vol. 14, p. 227.*

2003. Debts due sutlers cannot be allowed as a stoppage against the pay of deceased soldiers, unless noted on the muster rolls as duly verified. Neither can they be allowed to an amount exceeding the maximum established by paragraph 218, Army Regulations 1861.—*Vol. 24, p. 70.*

NOTE.—Lien of one-sixth of pay created by act of March 19, 1862, (12 Stat. 372, sec. 4.)

2004. Amounts due sutlers, noted on certificates of discharge, should be deducted by paymasters, and sums so deducted be settled by Second Auditor.—*Vol. 24, pp. 134, 135.*

2005. Sutlers' claims arising while there was no lien on soldier's pay, will be considered a lien if with consent of soldier; and his consent is presumed when the stoppage is properly noted on the rolls. But against deceased soldiers the lien will not be allowed. Army Regulations, par. 218, ed. 1863.—*Vol. 24, pp. 559, 560.*

NOTE.—The act of December 24, 1861, (12 Stat., 331, sec. 3,) repealed sutlers' lien, which was in force from date of act of June 12, 1858, (11 Stat., 336, sec. 5.) The act of March 19, 1862, (12 Stat., 371,) revived the lien to the amount of one-sixth of monthly pay. The act of July 28, 1866, abolished the office of sutler, (14 Stat., p. 336.)

TAX.

I. GENERAL CASES AND MILEAGE.

II. SALARIES.

III. DISBURSING OFFICERS AND PENSION AGENTS.

IV. EXEMPTION AND STAMPS.

V. HALF PAY; EXTRA PAY; RETIRED OFFICERS.

I.—GENERAL CASES AND MILEAGE.

2006. One-half the gross amount of sales, including interest upon investment pending the decision of the court, in the case of prize vessel, deducting amount of costs and expenses, was held liable to government tax.—*Vol. 30, p. 63.*

2007. Where a railroad company made a contract with the government after the passage of the internal revenue law of June 30, 1864, (13 Stat., 275,) to transport certain troops at one and one-half cents per mile, held that the company is restricted to the exact terms of the contract, and thereby precluded from adding the tax to the stipulated rates.—*Vol. 28, pp. 109, 110.*

2008. By the act of March 3, 1865, (13 Stat., 483, sec. 3,) all moneys heretofore directed to be paid to the Commissioner of Internal Revenue are paid into the treasury. In adjusting the accounts of officers for tax on salaries withheld by them in making payments, the First Comptroller requires one of the certificates of deposit as the officer's voucher, but as evidence of presentation with the abstracts at the office of the Commissioner as required by the 123d section of the above act, the cashier of internal revenue is required to write his initials, with date of receipt, across the face of the certificate, returning it to the officer making the deposit. The certificate thus verified being substituted for the cashier's receipt is the voucher of the officer.—*Vol. 28, pp. 531-555.*

2009. Actual travelling expenses are not subject to a deduction of the five per centum tax; but commutation therefor and for rations is subject to such deduction.—*Vol. 27, p. 187; vol. 28, p. 504.*

2010. Five per cent. revenue tax is deducted from officers' mileage accounts when commuted at regulation rates.—*Vol. 30, p. 297.*

II.—SALARIES.

2011. The duty of five per centum is to be withheld from all salaries of officers or payments for services to persons in the civil, military, naval, or other employment or service of the United States when exceeding the rate of six hundred dollars per annum.—*Vol. 27, p. 187.*

NOTE to 2016, modifying Nos. 2013-2015.

2012. The requisition for balance of salary due should designate the full amount. The accounting officers should state the tax to be deducted by the treasurer on payment of the balance.—*Vol. 24, p. 516, 517.*

2013. Each commissioned officer in the army receives from a paymaster compensation at a rate exceeding six hundred dollars; therefore all payments to commissioned officers made by a quartermaster or disbursing agent, other than a paymaster, will be in excess of the rate of six hundred dollars per annum, and the duty of five per centum must be withheld from such payments.—*Vol. 27, p. 187.*

2014. Tax on salary is to be computed on the rate when the salary falls due, and not at the rate existing at the time of payment of the tax. *Vol. 30, p. 45.*

2015. Where persons are transiently employed the tax will be computed on a basis of three hundred working days in each year. In such cases the amount of two dollars per day will, consequently, be exempt from taxation. Where persons in the service of the government are employed or paid by the month, the amount paid them above \$50 for each month is subject to a tax of five per cent. Where such persons are paid or employed by the year, payments above the sum of \$600 are liable to the same tax.—*Vol. 27, p. 187.*

2016. When persons are employed by the day the salary tax should

be withheld from the excess of \$1 93 for each calendar day employed. *E. g.*

A has been employed but one calendar day in any given month; it is immaterial how much he has earned; the amount of \$1 93 is exempt and no more.

B has been employed twenty calendar days in any given month; it is immaterial how much he has earned; the amount of twenty times \$1 93 = \$38 60 is exempt, and no more.

C has been employed 31 calendar days in any given month; in his case \$59 83 are exempt.

D by working overtime makes 40 days government time during one calendar month; he is exempt from tax on \$1 93 only for each calendar day of 24 hours employed.

When persons are employed by the month the amount of \$50 per month is exempt.—*Vol. 28, p. 496.*

NOTE.—See act of March 2, 1867, (14 Stat., 471,) exempting \$1,000 from the income tax.

2017. When the employment is permanent the deduction should be upon \$50 per month, although the salary is a per diem allowance. If from the nature of the employment changes are necessarily frequent, employes should be classed as temporary, and the excess of \$1 93 taxed.

NOTE. Since the passage of the law of March 2, 1867, (14 Stat., 478,) \$1,000 per annum is exempt from the tax, and the same ratio applies to the month and the day. *Vol. 28, p. 622.*

2018. The mode of payment, whether daily, weekly, or monthly, has no effect on the amount of salary exempt. See the act of July 1, 1862, (12 Stat., 432,) modified by act of March 2, 1867, (14 Stat., 471,) exempting \$1,000 from tax. *Vol. 28, p. 594.*

2019. Section 9 of the act of July 13, 1866, (14 Stat., 140,) exempts mechanics or laborers employed upon the public works from payment of tax upon their wages, and such terms of description, by the ruling of the Commissioner of Internal Revenue, do not include clerks, draughtsmen, &c.; but those persons only who are generally known as mechanics or laborers, such as carpenters, bricklayers, blacksmiths, machinists, teamsters, &c.—*Vol. 29, pp. 439, 440.*

2020. But payments to mechanics and laborers employed not in the construction of public works, but simply at them, or upon public work, such as printers at the Government Printing Office, gunsmiths in the public armories, clerks and others employed in the public offices, should be returned as payments to persons in the civil service of the United States.—*Ibid.*

III.—DISBURSING OFFICERS AND PENSION AGENTS.

2021. In lieu of remitting or depositing such deductions on account of tax, disbursing officers of the navy and marine corps are authorized and required to enter in the proper column of

their pay-rolls or summary statements, opposite each name, the amount of tax deducted in the settlement to which such roll or statement refers. In other words, they will treat such deductions for tax precisely as they are required, by law and long usage of the naval service, to treat deductions from pay for the benefit of the naval hospital fund. But they will continue, as heretofore, to render to the Commissioner of Internal Revenue the statement required by the 123d section of the excise law.—*Vol. 27, p. 187.*

2022. One disbursing officer may deduct internal revenue tax from the sum due payee, which was omitted in making payment by his predecessor.—*Vol. 25, pp. 316, 317.*

2023. Disbursing officers and agents will make monthly lists of the tax retained by them during the month, in duplicate; one to be, forwarded directly to the bureau in which the accounts of the officers or agents are stated, and the other to be filed with his accounts. At the end of each month the Second, Third, and Fourth Auditors will severally cause consolidated accounts to be stated, (one for each of the departments from which they receive accounts,) containing the names of the officers and the amount of tax retained by each, arranged under the proper heads of appropriation. These accounts will be sent by the Auditors to the revising officer to be examined, passed and recorded as other accounts. When received and passed, and the reports of the Auditors approved by the revising officer, a requisition will be issued in favor of the United States, the amount therefor to be carried to the credit of the internal revenue fund as a receipt from tax on salaries.—*Vol. 29, p. 483.*

2024. The tax on salaries of all disbursing officers should be deducted at each regular period for rendition of their accounts. Allowance for clerk hire is a part of the salary, except when the clerk is employed at a cost equal to or greater than the allowance, which should then be excluded from the statement as to the officer's salary. The salary of the clerk, whether temporary or permanent, is subject to the tax, provided it be in excess of \$50 per month or \$600 per annum.—*Vol. 28, pp. 43, 46.*

NOTE.—Amended by act of March 2, 1867, (14 Stat., 478.) exempting \$1,000.

2025. Disbursing officers are required, under the rule laid down by the Secretary of the Treasury, to accompany each account rendered with a statement or schedule showing in detail the amount of tax deducted in making payments to persons in the service of the United States, whose annual salary exceeds \$600, (amended to \$1,000.) The tax is neither to be deposited nor entered upon the account current of the disbursing officer, who will charge only the net amount of his payments after deducting the tax. With this statement or schedule the accounting officers will be enabled to debit the proper appropriation with the amounts thus deducted and withheld, and cover the same into the treasury to the credit of the internal revenue fund.—*Vol. 29, pp. 344, 345.*

2026. Officers are still required to send to the proper auditors monthly statements of revenue tax withheld, together with copies of their accounts current.—*Vol. 30, p. 366.*

2027. Office expenses and clerk hire are not exempt from taxation under the excise law of July 1, 1862, (12 Stat., 472, sec. 86,) (473, sec. 90.)—*Vol. 25, p. 256.*

2028. The tax upon the compensation of pension agents is not assessed by the internal revenue assessor, nor paid to the internal revenue collector, but such agents being disbursing officers, who pay to themselves their own compensation, are required to deduct the amount of the tax upon the same when rendering to the Treasury Department their accounts for services in paying pensioners. See act of July 1, 1862, (12 Stat., 472,) sec. 86.—*Vol. 28, p. 446.*

2029. Pension agents are required to pay the tax upon their own salaries and those of their clerks, upon so much thereof as may be in excess of \$1,000. *Vol. 28, p. 70.*

IV.—EXEMPTION AND STAMPS.

2030. Payments made to officers in the service of the government as reimbursements for actual expenses, of which an account is rendered, are not subject to a reduction of the three per cent. tax. But when moneys are received by such officers by way of commutation, and no account of actual expenses is rendered, the three per cent. tax must be assessed upon the amount so rendered, in conformity with the decision of the internal revenue office.—*Vol. 24, pp. 476, 477, 507, 508.*

2031. All places purchased by the United States with the consent of the legislature of the State in which they are, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings, are exempt from taxation by any authority in said State.—*Vol. 18, pp. 244–246.*

2032. When the legislature of a State has given its consent to the purchase by the United States of any place for the erection of forts, magazines, arsenals and other needful buildings, Congress, by the Constitution, has exclusive jurisdiction, and the property is not subject to taxation by State authorities. On general principles, if the State has not given its consent to the purchase, the State government has no right to tax the constitutional means (such as docks, yards, barracks, &c.) employed by the government of the Union to execute its constitutional powers.—*Vol. 18, p. 244.*

2033. Commissions due and payable before the passage of the internal revenue laws, but paid after their enactment, are not taxable.—*Vol. 30, p. 130.*

2034. Stamp duties are not required on powers of attorney or any other paper relating to applications for bounties, arrearages of pay, or pensions, or to the receipt of the same. See section 160, act of June 30, 1864, (13 Stat., 294.)—*Vol. 28, pp. 182, 184.*

2035. The exemption from stamp duty under act of March 3, 1863, (12 Stat., 721, sec. 6,) of powers of attorney and other papers relating to applications for bounties, arrearages of pay, or pensions, and to the receipts thereof from time to time, applies only to soldiers and seamen who have been regularly mustered into the United States service.—*Vol. 30, pp. 695-697.*

2036. When a lease, contract, or agreement to which the United States is a party, is signed and executed by a United States officer, in his official capacity, no stamp is necessary; but when an instrument (a bond for example) to which the United States is a party, but which is not signed by any person representing the government, is issued, it should be stamped.—*Vol. 29, p. 275. BONDS, 148.*

2037. Where a contract was filed, written on six separate pieces of paper, it was held that under the 94th section, schedule B, of the act of July 1, 1862, (12 Stat., 432,) each separate piece required the stamp of the denomination there stated.—*Vol. 26, p. 23.*

V.—HALF PAY; EXTRA PAY; RETIRED OFFICERS.

2038. Where an officer is absent on leave, or overstays his leave of absence, and is consequently entitled to half pay only for the period of absence stated, he should be taxed on what he receives in excess of \$1,000 per annum. *Vol. 29, p. 353.*

2039. The three months' pay proper granted by the 4th sec. of the act of March 3, 1865, (13 Stat., 497,) to officers, on discharge at the close of the war, is subject to the internal revenue tax of five per centum, to be deducted by the proper disbursing officer. See also sec. 123, act of June 30, 1864, (13 Stat., 285.)—*Vol. 28, p. 172.*

2040. The salary and commutations of an officer retired under section 17, act of August 3, 1861, (12 Stat., 289,) and section 12, act of July 17, 1862, (12 Stat., 596,) are taxed when they exceed \$1,000 per annum.—*Vol. 29, p. 353.*

2041. When the officer is wholly retired from service with the privilege of drawing a year's salary and commutations, the entire amount of such pay should be held taxable, the \$1,000 having been already exempted in a former year. See act of July 17, 1862, and General Orders No. 132, of 1862.—*Ibid. PENSIONS, II, 1562.*

TEAMSTERS.

2042. Teamsters employed under the act of March 3, 1847, (9 Stat., 185, sec. 9,) are included in the "additional force" (*idem*, p. 186, sec. 22,) required by that act to be discharged at the close of the Mexican war; but if retained in service beyond that period, are entitled to pay until discharged.—*Vol. 14, p. 332.*

NOTE.—The Quartermaster General remarked on a claim by a teamster for three months' "extra pay," that "teamsters are not

entitled to it by law, regulation, or special agreement." The accounting officers so decided, 1849.

2043. Since the passage of the act of August 23, 1842, (5 Stat., 512,) no allowance can be made to soldiers employed as teamsters, either in the volunteer or regular service, beyond the extra pay authorized under the acts of March 2, 1819, (3 Stat., 488,) and August 4, 1854, (10 Stat., 576, sec. 6.)—*Vol. 13, p. 14.*

2044. There is no authority to pay over the amount due a teamster, on his deserting the service, to a sutler, or to any other person to whom he may be indebted.—*Vol. 12, p. 478.*

2045. In case of Hugh Irwin, hired as a teamster by the month, for an indefinite time, who, with five others, quit without any previous notice, held that he forfeited his right to arrears of pay due him.—*Vol. 20, p. 263.*

2046. If a teamster violates his agreement, or abandons the officer to whose authority he is legally subject, he forfeits all claim upon the government.—*Vol. 18, p. 12.*

2047. Transportation of discharged teamsters is not allowed, unless evidence is furnished that they are entitled to transportation by the terms of their agreement.—*Vol. 23, p. 451.*

2048. A soldier was discharged for the purpose of being employed as teamster. When discharged as teamster he claimed travel-pay. Comptroller Parris decided that as a teamster has no legal claim to travelling allowances under the act of January 29, 1813, (2 Stat., 796, sec. 15,) it would seem to be equitable that such allowances should be allowed to him once in some capacity. Comptroller Brodhead re-affirmed this decision.—*Vol. 27, p. 94.*

2049. A soldier who is discharged for the purpose of being employed as a teamster in the quartermaster's department is legally entitled to travelling allowances under the 15th section of the act of January 29, 1813, (2 Stat., 796.)—*Vol. 13, p. 28.*

TELEGRAMS.

2050. Telegraphic despatches certified by the officer receiving them to be true copies, will be accepted as evidence in support of accounts against the United States when it is not possible to obtain the signature of the officers sending the despatches.—*Vol. 28, pp. 490, 491.*

TOPOGRAPHICAL ENGINEERS.

2051. Infantry officers having charge of parties doing topographical duty are embraced in the regulation of September 1, 1832; the word "*corps*," as used in that regulation, embraces all the officers doing topographical duty by assignment—*Vol. 7, p. 72.*

2052. By the regulation of January 13, 1832, the per diem allowance to officers employed in the field or topographical duty is one

dollar. This allowance, being in lieu of transportation and quarters, has reference only to the time he is so employed and when traveling.—*Vol. 6, p. 71; vol. 5, p. 333; vol. 18, pp. 428, 429.*

2053. The allowance of one dollar per diem to officers upon topographical duty in the field, in lieu of quarters and transportation, is not continued by the Army Regulations, War Department, June 11, 1828, and September 1, 1855.—*Vol. 20, pp. 145, 146.*

2054. An officer on topographical duty, detained *en route* on a journey for which he receives mileage for the whole distance, is not entitled to the per diem as on topographical duty in the field, nor the commutation of quarters and fuel during such detentions; only one of these allowances can be received at the same time.—*Vol. 19, p. 453.*

2055. Newspaper subscription is not allowed officers of topographical engineers.—*Vol. 21, pp. 310–312.*

TRANSFERS.

2056. No transfers of money to cover disbursements of money under an appropriation, can be made at the treasury when there is no money in the treasury to the credit of that appropriation, nor can an officer be credited for disbursements under such circumstances.—*Vol. 16, pp. 494, 495, 501, 502.*

2057. A disbursing officer has no right to make any transfer of funds in his accounts from one appropriation to another. Such transfers never have been recognized by the accounting officers of the government. It will be their duty, should any errors occur in his accounts, to correct them, and to call for all the transfers necessary to their proper settlement.—*Vol. 16, pp. 494, 495.* APPROPRIATIONS, 85, 86.

TRANSPORTATION.

2058. Since the passage of the act of August 23, 1842, (5 Stat., 512,) no allowance can be made to military storekeepers for transportation of baggage or commutation for it.—*Vol. 11, p. 360.*

2059. Officers ordered with men to attend civil courts as witnesses, in virtue of subpoenas or orders from superior officers, are entitled to an allowance for transportation of baggage; the men not being considered a *detachment* in the military sense of the term.—*Vol. 6, p. 170.*

2060. The certificate of an officer that he has paid the cost of transportation of his allowance of baggage, and that it is not practicable to obtain sub-vouchers therefor, is sufficient to justify repayment.—*Vol. 30, p. 57.*

2061. For transportation of public stores on railroads, &c., a properly receipted bill for the same, accompanied by the proper

officer's certificate of delivery, would be sufficient, as it is not customary to give bills of lading in such cases.—*Vol. 19, pp. 215–252.*

2062. An officer directed the quartermaster acting within his command, to furnish transportation to discharged soldiers who had either received all their allowance, including transportation, or final statements authorizing paymasters to pay it. The quartermaster entered into a contract with the Pacific Mail Steamship Company to transport the men. The quartermaster at San Francisco refused to pay the claim. It was held that the quartermaster acted officially and in his public character when he made the contract for transportation; that when a public agent acts in the line of his duty and by competent authority, his contracts are public and not private, and that payment of the claim legally may be made by the quartermaster at San Francisco.—*Vol. 25, pp. 473–475.*

2063. Where transportation orders were presented as evidence of transportation on board a vessel in government service, held that proof must be furnished that the service designated in the orders was performed and that the vessel was not bound to render this special service free of cost.—*Vol. 30, p. 399. EVIDENCE, 819.*

2064. The transportation of officers' families at the public expense is entirely unauthorized by law; nor has any person authority to enter into a contract with an officer for the payment of the passage money of his family, either in a transport vessel or otherwise, upon condition that he relinquish his rations or other allowances during the period of the voyage.—*Vol. 15, p. 252.*

2065. The commutation for transportation was never designed to be an emolument, but simply a reimbursement of expenses necessarily incurred in travelling upon official duty. No equitable claim can exist for anything more, and the regulations of the War Department having prescribed the conditions upon which commutation may be allowed, and in what cases the actual expenses are to be charged, the accounting officers cannot assume to disregard those regulations or adopt a new construction of their requirements.—*Vol. 19, pp. 147, 148*

2066. An officer is not entitled to transportation for a servant while travelling, unless he is disabled by wounds or disease, or in changing station. Travelling under orders he is entitled to his mileage by the shortest mail route, or to actual expenses or commutation by the shortest route, as he may elect.—*Vol. 29, pp. 148, 149.*

TRAVEL-PAY.

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B. OF THE MARINE CORPS.

III.—*Officers.*

C. OF THE NAVY.

IV.—*Officers.*

I.—OFFICERS OF THE ARMY.

- a.—*General principles and cases.*

2067. Where an officer's claim for transportation has been settled, and has so remained without objection by him for a year, an additional claim, on the ground of an underestimate of the distance travelled, will not be entertained at the treasury.—*Vol. 15, p. 226 ; vol. 17, pp. 218, 219, 287, 288, 316, 317, 408 ; vol. 22, pp. 161–164.*

2068. An officer's account for travel cannot be reopened for the purpose of making additional allowances, unless the sum received was less than actual expenses. Otherwise, if the payment was less than the legal rate *per mile*. Acts of March 3, 1839, (5 Stat., 349, sec. 3,) and August 23, 1842, (5 Stat., 510, sec. 2.)—*Vol. 19, pp. 363, 546, 547 ; vol. 29, p. 513.*

2069. Officers on leave of absence must return to their duty, wherever that may be, without expense to the government. Orders

given for their return to duty are not to be construed so as to entitle them to transportation.—*Vol. 15, p. 142.*

NOTE.—Modified so as to allow transportation where the station of the officer is changed. See par. 1113, Army Regulations, 1863.

2070. The Secretary of War construed paragraph 45, regulations of 1857, as allowing an officer on leave of absence transportation if he is ordered to duty, provided that he does not return to the post or troops he left. (Case of Captain I. M. Howe, *vol. 48 B², 1st qr., 1857, Captain M. S. Miller's account.*)—*Vol. 27, p. 193.*

2071 B, special agent of the subsistence department, under orders of a United States commissary to proceed to Washington with funds, papers, &c., did not perform the journey until after he had paid over the funds. His account as settled at the Treasury was then closed. Held, that the travelling expenses could not be allowed.—*Vol. 21, pp. 396, 397.*

2072. An officer on sick leave, and ordered if his health permits to report in person to the Adjutant General, is not entitled to mileage for journey to report.—*Vol. 17, pp. 65, 66.*

2073. Employés in the field can have no claim to be transferred to Washington, unless it be founded on a special contract. War Department, August 22, 1854.—*Vol. 27, p. 192.*

2074. If when an officer was overpaid for transportation he shall refund too much, the excess may be paid to him.—*Vol. 19, p. 548.*

2075. An officer, prisoner of war, discharged on reaching a loyal State or place, is entitled to travel-pay from that place (of discharge) to his residence. Acts of January 29, 1813, (2 Stat., 976, sec. 15;) June 18, 1846, (9 Stat., 18, sec. 10;) and July 22, 1861, section 5, (12 Stat., 270.)—*Vol. 25, p. 499.*

2076. In case an officer or private be captured by the enemy, his pay and emoluments continue until parole, after which he is only entitled to the travelling expenses allowed by law. Act of March 30, 1814, (3 Stat., 115, sec. 14.)—*Vol. 19, pp. 371, 372.*

2077. The transportation of officers employed on civil works is chargeable to the appropriations for the works on which they are respectively engaged.—*Vol. 17, p. 200.*

2078. As a general rule, an officer who voluntarily quits the service is not entitled to travel-pay home; but when his resignation, and consequent honorable discharge, are in consequence of wounds or disability incurred in the line of his duty, it is sometimes allowed as an exception, and by special decision.—*Vol. 27, p. 447.*

2079. It is the established rule not to allow travel pay to officers and soldiers discharged at their own request, before the termination of their respective periods of service or enlistment.—*Vol. 28, p. 633.*

2080. The act of July 17, 1862, (12 Stat., 594, sec. 7,) limits the rate of mileage to officers of the army to six cents per mile, unless where an officer is ordered from a station east of the Rocky moun-

tains to one west of the same, &c., when ten cents per mile is allowed.—*Vol.* 27, *p.* 474.

2081. Where an officer of the army is tried on charges before a court-martial, found guilty and dismissed from the service, travel-pay home is not allowed. And having been an officer in the regular army, he is not entitled to the extra pay under the act of July 19, 1848, (9 Stat., 248, sec. 5.)—*Vol.* 16, *p.* 302.

2082. Travel pay, &c., is not always due when the journey is performed under an order, but it must be also on duty, and the case of an officer ordered to attend his own trial, and found guilty, is not included in the provisions of law or regulations allowing it.—*Vol.* 28, *p.* 442.

2083. It is not the practice to make any allowance of per diem, emoluments or expenses to officers, either of the army or navy, for detentions while travelling upon duty, when they have received, by law or regulations, a commutation for the expenses of their transportation.—*Vol.* 19, *p.* 450.

2084. Reasonable travelling expenses in foreign parts incurred by an officer in the discharge of duties assigned to him by the head of a department, will be allowed, without the production of vouchers, on the approval of the department.—*Vol.* 28, *pp.* 282, 283.

2085. Naval officers travelling out of the United States under orders, are allowed their actual necessary travelling fare, and, in cases of detention, the amount of extra necessary expense over what it would be at home, or at a home station. (Rule of Navy Department)—*Vol.* 28, *p.* 694.

2086. The transportation of a surgeon is under the administrative control of the quartermaster's department, and is chargeable to the appropriations for that department.—*Vol.* 23, *pp.* 195, 196.

2087. Veterinary surgeons, being neither military officers nor enlisted men, are not entitled to travel pay on discharge.—*Vol.* 28, *pp.* 155, 270.

2088. An assistant surgeon discharged and mustered out with his regiment, who did not avail himself of the transportation provided, but remained at the post in order to enter into a new contract solely for his own benefit, is not entitled to travel pay on his first discharge.—*Vol.* 29, *p.* 623.

2089. But if he remained because the exigencies of the public service required, then his so remaining does not work a forfeiture of his right to the transportation furnished at the time his regiment was mustered out, and which he lost by his delay.—*Ibid.*

2090. Chaplains of the army, travelling under orders are entitled to mileage under the same circumstances as would give it to other officers. See sec. 3, act of July 28, 1866, (14 Stat., 337,) relating to their transportation, and sec. 7 of the act of March 2, 1867, (14 Stat., 423,) relating to the allowances, &c., of chaplains.—*Vol.* 31, *p.* 320.

2091. The travelling expenses of an officer, incurred by him in performing a journey in pursuance of an order received while he is on furlough, cannot be allowed by the accounting officers.—*Vol. 11, p. 138.*

2092. An officer having applied to general headquarters for leave of absence, which was granted, and who, in the mean time, is detached from duty and ordered by the commander of the district in which he was serving, subsequently to the date of his leave, but prior to his receipt of it, to report in person to general headquarters, is not entitled to mileage for the journey, he not having travelled on duty although under orders.—*Vol. 17, p. 352.*

b.—*Actual expenses.*

2093. An officer of the army who hires a wagon at the expense of the government to transport him upon a journey, is not entitled to travelling allowance for such journey.

2094. Travelling expenses are not allowed unless the journey was performed by direction of the proper authority.—*Vol. 11, p. 422.*

2095. An officer performing a journey under circumstances which entitle him to travelling allowance, may travel by private conveyance and charge what the journey would have cost him by the usual conveyance.—*Vol. 9, p. 443.*

2096. No expenses of transportation of officers on recruiting service will be admitted, that do not arise from orders emanating from general headquarters, except they may be required to visit branch or auxiliary rendezvous under their charge, when they will be allowed the actual expenses incurred.—*Vol. 14, p. 190; vol. 19, p. 456-458.*

2097. Officers performing journeys for the purpose of obtaining funds, are only entitled to the actual cost of transportation under decisions of the accounting officers; but the Secretary of War issued the following regulations, and officers were allowed ten cents per mile on that duty for travel prior to the order:

“The regulation of this department, fixing the travelling allowance of officers, must govern in cases to which it applies until modified by the same authority.”—Decision Secretary of War.—*Vol. 27, p. 193.*

NOTE.—The Secretary gave directions that only actual expenses should be allowed after June 3, 1854.

2098. The actual expense of officers' transportation to cash drafts may be paid out of the appropriation on which the drafts are respectively drawn.—*Vol. 16, pp. 133, 534.*

2099. Item for fare in a sleeping car is a legitimate charge among the actual necessary travelling expenses of an officer travelling in the discharge of his duty or under orders, when the journey is performed in the night.—*Vol. 25, pp. 437, 506.*

2100. When an officer has been paid a sum equal to the actual expenses of his transportation under orders, he cannot under the regulations, nor in equity, have a claim for any additional allowance.—*Vol. 19, pp. 310, 311.*

2101. The actual travelling expenses in the army or navy do not include the food of officers, but merely railroad, steamboat, and stage fare.—*Vol. 24, p. 397.*

2102. The hire of omnibuses or other conveyances to transport officers between their domicils and the place of meeting of a court-martial, is not allowable.—*Vol. 17, pp. 287, 288, 316, 317, 408.*

2103. The travelling allowance to officers who travel without special instructions from their superiors, but upon duty which conveys the general authority, or imposes the necessity for travel, are the actual expenses of transportation and portage, as provided for by the 5th paragraph of the Regulations of the War Department of the 5th of March, 1844, and no more.—*Vol. 11, p. 135.*

2104. The Secretary of War, by his decision of October 7, 1854, determined the exception made in favor of officers going to California and Oregon. Officers cannot be allowed mileage for a part of a journey, and actual expenses for another part of the same journey. Lieutenant W. Myers's case, October 30, 1855.—*Vol. 27, p. 193.*

2105. An officer cannot so order himself to make a journey on public business as to be entitled to mileage.—*Vol. 31, p. 334.*

2106. An order for a tour of inspection, or a general authority to travel in discharge of special duties, has never been held to entitle an officer to mileage.—*Vol. 28, pp. 417, 418.*

2107. The travel pay of officers performed under orders in charge of recruits is limited to the actual necessary expenses, both going and returning on such service.—*Vol. 28, p. 624.*

2108. The actual travelling expenses of an officer were at one time held to be the expenses necessarily in excess of what they would have been had he not performed the journey in obedience to orders, but they are now limited to the fare by railroad.—*Vol. 29, p. 213.*

c.—Commutation.

2109. In regard to travel performed under orders by military storekeepers, the Secretary of War gave the following decision, and the Comptroller concurred: "I am of opinion that the prohibition contained in the act of August 23, 1842, (5 Stat., 510, sec. 2,) does not apply to the expenses of transportation incurred by those officers when travelling under orders. This is not a compensation, but a refunding of moneys expended or supposed to be expended. Nor is the payment by the mile, in lieu of the actual sum expended, a commutation. This term applies when money is given in lieu of some other allowance, as forage, rations, &c. The allowance of ten cents a mile for transportation is only an easy mode of regulating the manner of payment, in order to dispense with the necessity of taking vouchers and

rendering and examining accounts afterwards." Decision of Secretary of War, February 8, 1853.—*Vol. 27, p. 192.*

2110. The commutation of 10 cents a mile is not an allowance fixed by law, but is accorded an officer as a convenient mode of refunding money expended by him in journey under orders, thereby avoiding the necessity of collecting vouchers and rendering accounts in detail. The actual expense will be allowed on proper evidence. The shortest mail route, as stated by the Post Office Department, is the standard.—*Vol. 23, pp. 523, 524.*

2111. The actual expense of transportation, or a commutation of 10 cents a mile, is not a perquisite allowance or addition to the pay of a civil superintendent of an armory, and he is not prohibited from receiving the same when travelling in obedience to orders, by any provision in the act of March 3, 1855, (10 Stat., 638.)—*Vol. 18, pp. 354, 355.*

2112. Mileage or travelling allowances are considered a reimbursement and not an emolument. 15 Peters, 401. Act of March 3, 1835, (4 Stat., 757, sec. 2;) Opinions Attorneys General, October 19, 1842, vol. 4, p. 95.—*Vol. 17, p. 201; vol. 19, pp. 220-222, 248-250.*

2113. Travel pay must be estimated by the distance of the shortest practicable route, it being left to the officer to choose either mileage by the designated route, or actual expenses.—*Vol. 30, pp. 48, 49.*

2114. An officer making a journey on a verbal order, which was afterwards confirmed by a written one, was held to be entitled to mileage under paragraph 1109, Army Regulations.—*Vol. 30, p. 478*

d.—*Shortest mail route.*

2115. The rule in stating accounts for travelling expenses incurred under orders, is to allow for the distance fixed by the Post Office Department on the "*shortest mail route*," or the shortest practicable route, as the case may be. And this rule applies to all officers and persons who travel at the public expense in any branch of the public service.—*Vol. 19, pp. 220-222, 248-250.*

2116. The "*shortest mail route*" is the legal standard in calculating payments for travel performed by officers on duty.—*Vol. 11, pp. 15, 186; vol. 17, p. 293.*

2117. Where the mail route happens to be unusually circuitous, and there is a shorter and *usually travelled* route, the latter should be adopted. But where the shortest *actual* mail route is also the usually travelled route, that *must* be adopted. The distance should be computed upon the routes existing when the journey is made.—*Vol. 15, p. 194; vol. 16, pp. 78, 153.*

2118. By the regulations of the War Department, an officer travelling under orders to proceed from one point to another, is only entitled to charge for transportation by the shortest mail route

between those points; but when directed to travel over a particular route, his order is equally applicable to the points along that route, as to that of his destination, and the sum of the distances between the points of his route, as defined in the order, would be the whole distance for which he could claim the allowance for transportation.—*Vol. 27, p. 193.*

2119. Officers necessarily travelling under orders by a longer than the post office route, may elect to take actual expenses or mileage by the shorter route.—*Vol. 25, p. 424; vol. 18, pp. 313, 428, 429.*

2120. When an officer received mileage for a greater distance than the recognized shortest mail route between New York and San Francisco, it was held that the disallowance charged against him was proper.—*Vol. 19, p. 506.*

NOTE.—This was previous to the order of the War Department allowing travel by the Isthmus route.

2121. Neither nautical nor statute miles are recognized as the measure of allowance for officers' transportation, but the distance in miles as stated by the Post Office Department. The commutation of 10 cents a mile is merely taken as a ready mode of fixing the supposed actual expenses as a reimbursement of which only mileage can be legally allowed.—*Vol. 19, pp. 221, 222.*

NOTE.—This applies to cases where commutation was a matter of regulation, not of law.

2122. When an officer is unable to procure transportation by the shortest mail route, in consequence of the failure of the contractor to carry the mail thereon, or from other cause, he can be allowed mileage only for the shortest route, or his actual necessary expenses by the route he travelled, at his option.—*Vol. 18, pp. 375, 376, 428, 429.*

2123. An officer was discharged at New Orleans during the war, when the shortest practicable mail route to New York was by sea; he did not return to New York until the close of the war, when the shortest mail route was by land. His claim for travel pay by the first route was allowed.—*Vol. 28, pp. 571, 572.*

2124. Travel-pay from San Francisco, via the isthmus of Panama, is not allowable unless the order directed that route to be taken. If the officer's expense by the route he was obliged to travel was greater than the mileage by the shortest mail route, or the route by which he was paid, the excess will be reimbursed. (See General Orders No. 74, 1867.—*Vol. 28, pp. 643, 644.*)

2125. Officers travelling under orders to the Pacific coast, unless they are especially directed to travel by the Isthmus route, will have their mileage calculated by the overland route.—*Vol. 30, p. 698.*

e.—*To place of examination; first order; change of station.*

2126. An officer of volunteers appointed cadet is not entitled to travel-pay from his residence to West Point in order to report for examination.—*Vol. 25, p. 616.*

2127. A private soldier who is appointed an officer may receive transportation or mileage for travel in obedience to his first order received as an officer. The regulation (par. 1115) requiring *citizens* receiving military appointments to join their stations without expense to the public, does not apply to him.—*Vol. 31, p. 629.*

2128. In the case of a person appointed to a lieutenancy in the army, with directions to present himself to the board of examination, and if he passed to report to the Adjutant General for instructions. Held that as his appointment was inchoate until perfected by his passing a satisfactory examination, the notice to attend before the board could not be regarded as an order, and he having failed to pass, mileage for travel to and from the place of examination was disallowed. See act of July 28, 1866, (14 Stat., 336, sec. 24.)—*Vol. 29, p. 524.*

2129. Travel pay is not allowed to officers discharged on failure to pass a required examination.—*Vol. 29, p. 32.*

2130. A civilian *appointed* to the army is entitled, by the 24th section act of July 28, 1866, (14 Stat., 336,) to transportation from his home to the place of examination. Passing his examination and ordered to join his regiment, he is entitled to transportation from place of examination to his post.—*Vol. 30, pp. 384, 385.*

2131. A civilian *invited to appear* before an examining board is also entitled to transportation from his home to place of examination. Passing the examination, he returns home to await nomination and confirmation by the Senate, and is not subject to orders until he accepts his commission, and when after acceptance he is ordered to a post is not entitled to transportation.—*Vol. 30, pp. 384, 385.*

2132. Where an officer has passed an examination, his order to proceed from the place of examination to the station of his regiment or duty, is considered as a change of station within the meaning of the Army Regulations, and carries with it a right to travel pay, &c.—*Vol. 29, p. 622.*

(See letter of the Secretary of War, November 17, 1866.)

2133. In cases where an examination is required before appointment, the War Department considers the direction for the officer to appear before the board as his first order.—*Vol. 29, p. 524.*

2134. Officers commissioned in any one of the sixty regiments authorized by the act of July 28, 1866, (14 Stat., 332,) are entitled to travel pay from the place of their residence to the place of examination.—*Vol. 30, p. 295.*

2135. Paragraph 1203 of the Army Regulations must be considered as a modification of paragraph 983, so far as relates to medical officers being entitled to transportation on obeying the first order.—*Vol. 9, p. 406.*

NOTE.—Paragraph 1116 of the Army Regulations, edition 1863, provides that assistant surgeons, approved by an examining board and commissioned, receive transportation in the execution of their first order to duty.

2136. An officer does not change his station when he is temporarily relieved from command and ordered to duty on court-martial.—*Vol. 30, pp. 681, 682.*

2137. Under par. 112, Army Regulations, the practice has been to allow transportation to officers returning to duty under orders after leave of absence, if ordered to a post other than the station of the troops with whom they had been serving. *Semble* that after leave of absence an officer shall be entitled to transportation only for the distance he is required to travel which may be in excess of that which he would have travelled if ordered to his former post or the station of troops he left.—*Vol. 28, p. 677.*

2138. An officer stationed at St. Louis, while on leave of absence visited New York, and while there was ordered to Watertown, Massachusetts, as a new station. Held that he was entitled to mileage from New York only, and not from St. Louis.—*Vol. 30, pp. 656, 657.*

f.—From place of discharge to place of enrolment.

2139. On the discharge of a regiment of volunteers, the officers are not allowed travelling pay to any other State or Territory than that in which the regiment was raised, and where they received their appointments.—*Vol. 14, p. 308.*

2140. Volunteer officers on duty, when their regiments are discharged on expiration of enlistment, are entitled to travel-pay, &c., from the place where they may rightfully be at the time of discharge. See act of January 29, 1813, section 15, (2 Stat., 794.)—*Vol. 25, pp. 292, 293.*

2141. An officer discharged from service at New Orleans, who had been furnished with transportation from the city of Mexico to New Orleans while on furlough, is entitled to travel-pay home from New Orleans; but the distance for which transportation was furnished (from Mexico to New Orleans) must be deducted, no officer being entitled to transportation while on furlough, either in kind or by commutation.—*Vol. 17, pp. 168, 169.*

2142. A volunteer officer returning from California on leave, in consequence of sickness, and bearing despatches to the department, was paid up to the date of his arrival, and considered as discharged prior to the discharge of his regiment in California. Held that he is not entitled to travel-pay home.—*Vol. 16, pp. 113, 114.*

2143. A citizen appointed lieutenant in the army, and on the same day appointed captain and assistant quartermaster, is not entitled to travel-pay from the place of his residence to the station at which he was ordered to report for duty. Army Regulations, paragraph 1115, ed. 1863.—*Vol. 25, pp. 587, 588; vol. 27, pp. 228, 229.*

2144. An officer is entitled to travel pay only to the place where he entered service; and the place where an officer or soldier enters

the service is, in contemplation of law, the place of residence to which he is entitled to be returned when honorably discharged. The place of enrolment being always fixed by the muster-roll, but the place of residence seldom known.—*Vol. 27, pp. 305, 306, 384, 385 ; vol. 16, p. 109.*

2145. An officer holding the rank of lieutenant colonel, was mustered out of service at New Orleans August 22, 1864; reappointed captain, and accepted July 3, 1865, appointed brigadier general of volunteers July 20, 1865, and mustered out August 24, 1865. He claimed travel pay as lieutenant colonel when mustered out as such. Held that as he did not voluntarily leave the service, but was by competent authority definitely discharged, without fault on his part, on the 9th of September, 1864, and regarded as not in service for several months subsequent to that date, he is entitled to travel pay as lieutenant colonel from place of discharge to place of enrolment.—*Vol. 28, p. 332.*

2146. An officer originally enrolled as lieutenant colonel at San Francisco, California, then mustered out in order to be mustered in as colonel of the regiment, then resigned to accept commission as brigadier general in New Mexico, the station of his regiment. Held that having received no travel pay on being mustered out to receive a brigadier generalship, his service, in respect to travel pay, must be considered continuous, and travel pay due to San Francisco, the place of his residence and enrolment.—*Vol. 28, pp. 312, 313.*

2147. Travel pay was allowed the officers and privates of the 2d and 5th Massachusetts cavalry, enlisted at San Francisco, California, from the place of their discharge to the place of their enlistment, but the amount thus paid was charged to Massachusetts in the settlement of her claim under the acts of July 17 and 27, 1861.—*Vol. 28, p. 516.*

2148. Discharged officers and men of the California battalion attached to the 2d Massachusetts cavalry regiment, are legally entitled to travel-pay under the laws of January 29, 1813, sec. 15, (2 Stat., 796,) and July 22, 1861, sec. 5, (12 Stat., 269,) from the place of their discharge to San Francisco, the place of their enrolment; but such payments should be charged to the State of Massachusetts, and deducted from her credits in the settlement of her account against the United States.—*Vol. 28, pp. 327, 328.*

2149. A civilian, an applicant for a grade in the "*Corps d'Afrique*," was furnished transportation by the quartermasters' department to New Orleans, and after his arrival was appointed a lieutenant in the corps. He was subsequently discharged at New Orleans and made claim for travel pay to New York. Held that he was entitled to travel pay only to the place where he received and accepted his appointment — *Vol. 31, p. 145.*

g.—*Without orders.*

2150. Expenses of a journey by an officer of the army or navy, without orders, for the purpose of settling his accounts at the treasury, will not be allowed.—*Vol. 15, p. 370.*

2151. Mileage will be disallowed if the order for the journey, required by the regulations, is not filed.—*Vol. 21, pp. 310–312.*

2152. B, a United States quartermaster, travelled from Fort Monroe to Richmond, Baltimore, Norfolk and New York, at sundry times, in order to cash treasury drafts, procure transportation, &c. He travelled without the written orders of his proper superior officer. Held, that under the General Regulation of March 5, 1844, B could not be credited with his vouchers for travel — *Vol. 22, pp. 325–327.*

2153. Officers travelling on a general order will be allowed, by the regulations of 1861, actual expenses only, and not mileage.—*Vol. 24, pp. 181, 182; vol. 19, p. 216.*

2154. Officers travelling without orders in the necessary performance of their duties are entitled to actual expenses only. Army Regulations, ed. 1844, paragraph 5.—*Vol. 20, p. 527.*

2155. Voucher 58, (B 4th qr. 1850,) account of M. M. Clark, for payment of Major General Scott, for transportation for self and servant from Washington to New York: suspended for want of authority for performance of journey.

The Quartermaster General remarks upon the voucher: "Paragraph 1, of Regulations of March 5, 1844, requiring a written order to entitle officers to mileage, does not apply to the general-in-chief, he being the senior officer of the army and authorized to travel by his own authority."

The Secretary of War says: "I concur with the accounting officers in the reason assigned by them for the suspension of the vouchers, viz: as Major General Scott is an officer of the army the allowance for his transportation must be determined by the regulations which govern such allowances to all army officers; and as he has, in the President of the United States, as commander-in-chief of the army, a superior from whom he may receive orders, such orders are, under the regulations of March 5, 1844, necessary to the allowance of the rate of mileage authorized by the 1st paragraph and charged in this amount." Decision Secretary of War, May 3, 1853.

General Scott explains, (December 4, 1854,) that the journey was made on ordinary official business, with the consent and approbation of the Secretary of War, to look for house and office in New York for re-transfer of headquarters.

The Secretary of War then endorsed: "Under the circumstances stated by Major General Scott, and as the previous allowance of mileage by the accounting officers for journeys performed without a written order from a superior officer must have misled him to believe such an order not necessary, the within amounts are allowed." War Department, February 9, 1855.—*Vol. 27, p. 194.*

2156. The 7th section of the act of July 17, 1862, (12 Stat., 594,) limiting the travel pay to six cents a mile, when performed east of the Rocky mountains, was held to apply to the case of Lieutenant General Scott, the act of August 3, 1861, (12 Stat., 289,) assimilating his pay and allowances, in the event of his retirement, to those of officers on the active list.—*Vol. 29, p. 130.*

h.—*Paymasters.*

2157. Paymasters and other officers making journeys, within the limits of districts to which they are assigned, incidentally necessary to the performance of their duties, are not entitled to mileage, but to actual expenses. Paragraph 1001, regulation of March 18, 1857.—*Vol. 20, p. 150.*

2158. Paymasters, inspecting officers, and others who travel out of their districts to make inspections, pay troops, or other special duty, under the orders of their proper superiors, should pursue the *most direct route from place to place*; having done their duty they are entitled to mileage, whether the order specifically points out routes or the points or not.—*Vol. 27, p. 111.*

2159. Paymasters' clerks are entitled by law to the actual expense of transportation while travelling under orders in discharge of their duty; but no commutation or per diem in lieu of actual expenses can be allowed.—*Vol. 19, p. 539.*

2160. Paymasters, inspectors, and other officers, making journeys within their districts, on special orders in each case specifying the termini, may be allowed mileage.—*Vol. 30, pp. 681, 682.*

2161. The special order of the district paymaster to a subordinate for the performance of travel, on duty, entitles the officer to mileage.—*Vol. 31, p. 99, 100.*

2162. Payment of mileage to paymasters making journeys on special orders within their districts or to pay troops, is not prohibited by Quartermaster General's Order No. 65, August 11, 1866.—*Vol. 31, p. 135.*

2163. Paymasters, and officers assigned to duty, are not entitled to mileage for journeys made at stated periods within the limits of the districts to which they are assigned under orders of a general character, but only to actual costs of transportation. When special orders are given to paymasters for the performance of a journey within the limits of their districts, they are entitled to mileage.—*Vol. 30, p. 567.*

II.—SOLDIERS.

a.—*General principles and cases.*

2164. A soldier discharged in order to enable him to enlist as hospital steward, is not entitled to mileage.—*Vol. 24, p. 376.*

2165. A soldier who, at the time of his discharge from service, is in custody of the civil authority, and under sentence of imprisonment, is not entitled to receive travelling allowance.—*Vol. 15, p. 299.*

2166. Where an officer or soldier is furloughed before the expiration of his term of service, he cannot receive for the balance of his time both his travelling pay and his pay as in service.—*Vol. 12, p. 363; vol. 25, pp. 556, 557.*

2167. Travelling allowance will not be admitted when transportation in kind has been provided.—*Vol. 21, p. 235.*

2168. The increased pay allowed by the first section of the act of August 4, 1854, (10 Stat., 575,) is to be included in computing travel-pay allowed to discharged soldiers, under section 15, act of January 29, 1813, (2 Stat., 796.)—*Vol. 17, p. 369.*

2169. A soldier is not entitled to travel-pay and rations, who is still in the receipt of his regular pay and rations.—*Vol. 25, pp. 556, 557.*

2170. Travel-pay is not allowed to a soldier dishonorably discharged at any time previous to the expiration of his term of enlistment, unless discharged on surgeon's certificate of disability.—*Vol. 16, pp. 419, 469, 492, 536.*

2171. The 10th section of the act of March 3, 1863, (12 Stat., 744,) in relation to under-cooks of African descent, restricts "their full compensation to \$10 per month and one ration per day." The words of the law thus forbid the pay department from including travel pay to these men when discharged, as in the case of other enlisted men.—*Vol. 28, p. 320.*

2172. A soldier cannot elect whether he will take transportation, or commutation therefor, to his home. If the government is able and willing to furnish him transportation within a reasonable time after his discharge, he is bound to accept, or waive his claim altogether. It is not in his power, by paying his way home, to establish a good claim against the government for commutation.—*Vol. 28, pp. 561, 562.*

2173. But where a soldier was on the march from Atlanta to Savannah at the time his enlistment expired, and did not receive his discharge until his arrival at Savannah. Held that he is entitled, if entitled at all, to travel from the latter place, but that it is incumbent to show that he paid his own travelling expenses, and that the government was unable or unwilling to transport him. *Ibid.*

2174. A discharged drafted man is entitled to travel pay from place of residence to rendezvous and return.—*Vol. 29, p. 57.*

2175. The men of the 1st army corps (Hancock's) having been furnished free passes to Washington city and enlisted there, have no legal claim for travel pay to any other point when discharged. But transportation in kind was furnished to such of them as wished it.—*Vol. 30, p. 93.*

2176. A soldier at home on furlough when his regiment was dis-

charged because no longer necessary, is not entitled either to travel pay and subsistence in kind or commutation therefor, and, having served less than a year and a half, is not entitled to the second instalment of bounty, under the act of July 4, 1864.—*Vol.* 30, *p.* 652.

b.—From place of discharge to place of enrolment.

2177. A soldier, when honorably discharged from service, is allowed his pay and rations for such term of time as shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles to a day. No fractions of a day are paid for. If the fraction of distance be ten miles or more, a day is paid for; if less than ten miles, nothing.—*Vol.* 14, *p.* 35.

2178. The place of enlistment is usually considered the place of residence, within the meaning of the law. But if the soldier is enlisted in an enemy's country, and brought back to the United States and discharged, his travelling allowance will be computed from the place of discharge to his home or place of actual residence.—*Vol.* 14, *p.* 35.

NOTE.—The act of July 22, 1861, (12 Stat., 270, sec. 5,) names the place of enrolment for volunteers instead of "residence," as in the law of January 29, 1813, (2 Stat., 796, sec. 16.)

2179. A soldier discharged under such circumstances as entitle him to the benefit of the provisions of the 15th section of the act of January 29, 1813, (2 Stat., 796,) is entitled to his travelling allowances under said act from the place where he was when the discharge took effect to the place of his residence.—*Vol.* 12, *p.* 34.

2180. Where the law provides for travel allowance for volunteers from place of enrolment or home to general rendezvous, it means the place of company or regimental gathering in the State. Acts of March 19, 1836, sec. 3, (5 Stat., 7;) and July 22, 1861, sec. 5, (12 Stat., 270.)—*Vol.* 24, *pp.* 420, 421.

2181. A soldier or marine who re-enlists under the act of March 2, 1833, (4 Stat., 647,) is entitled to his transportation to his home or the place of his enlistment.—*Vol.* 7, *p.* 413.

2182. A soldier who was discharged in Mexico, and died on his passage home, was entitled to his travelling allowance at the moment of his discharge. His representatives, therefore, have a legal claim to it.—*Vol.* 13, *p.* 11.

2183 Under the act of May 13, 1846, (9 Stat., 9,) volunteers are entitled for their travel to the place of rendezvous to one day's pay and subsistence for every twenty miles travel from their place of residence; and all mounted privates, non-commissioned officers, musicians, and artificers, are entitled, in addition, to forty cents per day for the use and risk of their horses, and the legal allowance for forage.—*Vol.* 11, *p.* 267.

2184. A soldier of volunteers or militia, who, from sickness or other proper cause, cannot avail himself of government transportation, or march with his company, is entitled to his travel-pay from the place where he may rightfully be when his company is discharged, to his place of residence.—*Vol. 12, p. 273.*

2185. Volunteers originally called into service for six months, and who, on the expiration of their term of service, were remustered for a second term, are not entitled to travelling pay and rations for each term to the place of their original organization or residence. No pay for constructive journeys home is allowed.—*Vol. 14, p. 228.*

2186. A soldier, held prisoner in Texas, escaped and reported for duty at Fort Columbus and was honorably discharged. He claimed travelpay and allowances from Texas to Fort Columbus. Held that he was only entitled to pay and allowances up to date of discharge.—*Vol. 25, pp. 556, 557.*

2187. A soldier in arrears to the United States for bounty erroneously drawn, is entitled on his discharge to receive transportation to the place of his enlistment, or commutation therefor, at the option of government. See 15th sec. act January 29, 1813, (2 Stat., 776;) 3d sec. act March 9, 1836, (5 Stat., 7.)—*Vol. 30, p. 583.*

2188. A soldier honorably discharged, has a right, under the law, to an immediate payment of his pay and rations, or an equivalent in money for the time necessary for him to travel from the place of discharge to the place of his residence, computing 20 miles for every day's travel. He is under no obligation to perform the travel if he shall choose to re-enlist or stay where he may be when discharged. And according to the act of July 22, 1861, (12 Stat., 270, sec. 5,) in case of a volunteer, the place of enrolment means the place of residence.—*Vol. 25, p. 239.*

2189. Soldiers discharged at their own request are not entitled to receive travel-pay and rations from the place of discharge to the place of enlistment.—*Vol. 18, pp. 184, 185.*

c.—Promotion, transfer, and shortest mail route.

2190. A soldier on receiving and accepting a commission as a company officer is not entitled to the travelling allowance provided for by the 15th section of the act of January 29, 1813, (2 Stat., 796;) nor is he entitled to pay as an officer until he has accepted the commission.—*Vol. 12, p. 334; vol. 18, p. 361.*

2191. A soldier discharged for promotion is not entitled to travel-pay and allowances to the place of enlistment as in the case of a discharge from service. Act of January 29, 1813, (2 Stat., 796, sec. 15.)—*Vol. 18, p. 362.*

2192. Veteran soldiers are not entitled to travel-pay on being discharged for transfer or re-enlistment in the veteran volunteers.—*Vol. 25, pp. 422, 425.*

2193. It has always been held that when a soldier is transferred from one branch of the service to another, or from the military to the naval service, he is not entitled to travel-pay.—*Vol. 25, pp. 264, 265.*

2194. A soldier released from one branch of the military service in order that he may enlist in another, claims travel-pay to the place of his enlistment. Held that his release was a mere transfer, and that upon his final discharge only would he be entitled to travel-pay.—*Vol. 16, p. 545.*

2195. A discharge for the purpose of re-enlistment has always been regarded as a transfer simply, and as the soldier performs no travel, and still retains his right to transportation on his final discharge, he has no claim to travel pay even in equity.—*Vol. 29, p. 104.*

2196. Travel-pay from California to New York is allowed by the *overland route*, and not *via Panama*.—*Vol. 22, p. 410.*

2197. The Mormon battalion of volunteers was mustered into service at Council Bluffs, in Iowa, marched to Mexico by the overland route, and was discharged at Los Angeles, in California, in July, 1847. A small portion of the battalion returned across the country, and others by way of Panama. The latter was the usually travelled route, the former being practicable to armed parties only. No mail route then existed.

The act of June 18, 1846, (9 Stat., 18, sec. 10,) requiring their travelling allowance home to be computed by the "most direct route," it was held (and this decision was confirmed by the Attorney General) that the allowance should be computed by the overland route.—*Vol. 15, p. 127; vol. 16, p. 73; vol. 27, p. 111.*

III.—OFFICERS OF MARINE CORPS.

2198. Marines on their discharge from service are, like privates in the army, entitled to travelling allowances to the place where enlisted.—*Vol. 7, p. 412.*

2199. An officer of the marine corps is entitled to the same pay, emoluments, and allowances as an officer of the infantry of the army, 4th sec. act of June 30, 1834, (4 Stat., 713,) and his travel pay stands on the same footing.—*Vol. 28, p. 466.*

2200. Officers of the marine corps travelling under orders, to or from stations west of the Rocky mountains, after July 13, 1866, and before August 3, 1867, are entitled to 10 cents per mile by the Isthmus route. After August 3, 1867, mileage will be computed by the shortest route, unless the Isthmus route is designated in the order for the journey.—*Vol. 30, pp. 666, 667.*

2201. No vouchers for travelling expenses of officers of the marine corps will be admitted, unless the routes on which the travel was performed are given, and distances charged according to the Post Office measurement on the shortest mail route.—*Vol. 15, p. 29.*

2202. The travelling expenses of persons employed as clerks to

officers of the marine corps, incurred under orders, may be refunded; but the actual expense incurred is the rule of compensation.—*Vol. 12, p. 190.*

IV.—OFFICERS—NAVY.

2203. An officer of the navy is not entitled to travelling allowances for journeys within the United States, unless made in pursuance of orders which he is legally bound to obey, and for the breach of which he is liable to arrest and punishment. Opinions Attorneys General, April 10, 1837.—*Vol. 15, p. 342.*

2204. When a naval officer is promoted while on a foreign station, and returns home, not at his own request, but in consequence of the inability of the commanding officer to give him duty appropriate to his rank, he is to be regarded as returning under orders.—*Vol. 12, p. 448.*

2205. When officers of the army or navy, without the United States, are obliged to pay for their transportation in the performance of duties assigned them by their commanding officers, such expenditures are to be refunded.—*Vol. 10, p. 58.*

2206. Per diem and travelling allowances to witnesses, other than naval officers, summoned before marine courts-martial "by authority derived from the Navy Department," are to be regulated by the allowances in such cases in army courts-martial.—*Act of June 30, 1834, (4 Stat., 712,) assimilating army and marine corps.*

2207. A naval officer who changes his place of residence, giving no notice thereof to the department, if ordered on duty will be entitled to travel pay from his former place of residence only, if the distance is thereby increased.—*Vol. 7, p. 73.*

2208. Officers in charge of drafts of men, travelling under orders from one post to another, are entitled to the legal allowance of ten cents per mile, according to the Post Office table of distances.—*Vol. 6, p. 381.* See paragraph 1146, Navy Regulations, p. 205.

2209. An officer at St. Louis received an order to report for duty on board his ship at Norfolk. On arriving at Washington he ascertained that the ship had sailed for New York, and he forthwith proceeded to join the ship at that port. It was decided that, as it appeared he had used proper diligence in obeying the order, he was entitled to travelling pay from Washington to New York.—*Vol. 7, p. 232.*

2210. The rate of travelling expenses, as fixed by the act of March 3, 1835, (4 Stat., 755.) is the proper allowance for pursers, as well as for other officers of the navy or citizens who perform travel in pursuance of orders or authority derived from the Navy Department.—*Vol. 6, p. 140.*

2211. Assistant surgeons are not entitled to travelling expenses in going to or returning from the place where the medical board of

examination convened, unless they are both examined and passed.—*Vol. 6, p. 140.*

2212. Midshipmen who shall produce a certificate from the president of the board of examination, that they have "passed," are to be paid their travelling expenses, at the rate of ten cents per mile, according to the Post Office table of distances. No per diem is allowed.—*Vol. 5, p. 233.*

2213. Assistant surgeons, attending examination for promotion, are placed on the same footing as to travel, &c., as midshipmen under similar circumstances.—*Vol. 28, p. 23.*

2214. The same rule in regard to travel applies to assistant engineers, when permitted to attend boards of examination for promotion or admission, that is applied to assistant surgeons and midshipmen under similar circumstances.—*Vol. 15, p. 80.*

2215. Midshipmen failing to pass, although regarded as on duty, are not entitled to travelling expenses.—*Vol. 5, p. 538.*

2216. An appointee as midshipman appeared before the board and passed. Held that the order of the department and his certificate of the place where he received it were sufficient to entitle him to travel. If the place were not on the table of distances, then a certificate from the general Post Office Department would establish a distance to be paid for.—*Vol. 27, p. 195.*

2217. Hereafter the travelling expenses to acting midshipmen who receive an appointment are to be only the "actual and necessary travelling expenses to academy, and same allowance, when dropped, to their homes." Secretary of Navy to Second Comptroller, August 30, 1856.—*Vol. 27, p. 195.*

2218. The rule on page 43 of Red Book is still in force, and midshipmen returning from a foreign station under permission to attend examination are not entitled to the expenses of returning until they pass. See, also, letter of Fourth Auditor to Midshipman Newcomb, November 24, 1843; decision of Secretary of Navy, December 12, 1844, and January 5, 1849, in case of Midshipman Mulligan.—*Vol. 27, p. 195.*

2219. Paymasters in the navy are not allowed travelling expenses in coming to Washington to settle their accounts, unless they do so under express orders from the Secretary of the Navy to that effect.—*Vol. 29, p. 33.*

2220. When an officer travels without an order for his journey, although in anticipation of such an order, his travel-pay will not be allowed. See act of March 3, 1835, sec. 2, (4 Stat., 757;) and Opinions Attorneys General, April 10, 1835.—*Vol. 22, pp. 119, 120.*

2221. When an appointment as captain's clerk, and orders for him to join the ship, are sent to a citizen from a vessel abroad, he is not entitled to travelling expenses for going out, nor to pay until he actually joins and reports for duty on board. Act March 3, 1835, (4 Stat., 757, sec. 2.)—*Vol. 19, pp. 77, 78.*

2222. An officer was tried in 1852 for insubordination, found

guilty, and sentenced to be dismissed from the squadron. He applied on his arrival for travel-pay. The Auditor referred the claim to the Secretary of the Navy, who endorsed "allowed."

No formal decision has been made in such a case under the law of March 3, 1835, (4 Stat., 757, sec. 2,) though the regulations of the Red Book, p. 20, are adverse to the allowance. The Comptroller dissented from the ruling of the Secretary on the ground that it was no punishment for an offence to relieve an officer from duty, continue his salary, and pay his travelling expenses home.—*Vol. 27, p. 194.*

2223. When actual travelling expenses are authorized by regulations to be refunded, they are not held to include "mess bills." "Actual expenses" for officers of the army or navy while travelling, either within or without the United States, do not include subsistence on board, except in those cases on steamers or other vessels where the charge is the same with or without subsistence.—*Vol. 25, p. 103.*

2224. An officer is entitled to allowances for expenses of travel performed by order of a naval bureau. See act of August 31, 1842, (5 Stat., 580, sec. 5.)—*Vol. 25, p. 631.*

2225. Navy officers when travelling under orders are entitled to transportation, but not subsistence. Act of March 3, 1835, (4 Stat., 757, sec. 2.)—*Vol. 24, pp. 533-535.*

2226. The allowance of ten cents mileage to an officer travelling under orders, is limited to the United States; for travel in foreign parts his actual expenses only are allowed. Acts of June 30, 1834, (4 Stat., 713, sec. 5,) and March 3, 1835, sec. 2, (4 Stat., 757. Army Regulations, par. 999, ed. 1857.)—*Vol. 22, p. 331-333.*

2227. Captain Stribling, United States navy, travelled from Hong Kong, overland route, to the United States. He presented vouchers as to a portion of his expenditures and a statement as to the rest of the same. It being granted that the Secretary of the Navy authorized the journey, and that Captain Stribling travelled by the shortest and usually travelled route, and that it was impracticable for him to obtain vouchers, a certificate on honor to a detailed statement of items will entitle him to payment.—*Vol. 23, p. 288, 289.*

VOLUNTEERS AND MILITIA.

2228. Under the act of May 13, 1846, (9 Stat., 9,) the pay of volunteers does not commence on enrolment, but when they are mustered into service.—*Vol. 13, p. 247; vol. 14, p. 148.*

2229. When an organized corps of militia is ordered out under the laws of the United States, only the number and description of officers to which such corps is entitled by the law of May 8, 1792, (1 Stat., 272,) "establishing an uniform militia," can be paid.—*Vol. 12, p. 22.*

2230. The act of March 2, 1849, (9 Stat., 349,) allows to each volunteer (or his legal representatives) in the military service of the United States in Mexico, who has been a prisoner of war, forty cents per day in lieu of subsistence during the whole time of his imprisonment.—*Vol. 13, p. 65.*

2231. There is no law or regulation requiring volunteers or militia, when received into the service of the United States, to be under oath. No charge, therefore, can be admitted for administering an oath in such cases.—*Vol. 7, p. 118; vol. 13, p. 131.*

NOTE.—The act of July 25, 1861, (12 Stat., 274, sec. 2,) provides that volunteers shall be subject to the rules and articles of war; the 10th article of which requires an oath or affirmation to be taken by every non-commissioned officer or soldier enlisting in the service of the United States. See also act of August 3, 1861, (12 Stat., 289, sec. 11.)

2232. The resolution of March 3, 1847, (9 Stat., 206,) and the act of June 2, 1848, (9 Stat., 236,) refunding to States and individuals amounts advanced to volunteers, do not authorize any allowance for pay to volunteers beyond the monthly pay given by the laws of the United States.—*Vol. 12, p. 452.*

2233. The 2d section of the act of August 11, 1842, (5 Stat., 504,) providing for the settlement of the claims of the State of Georgia for the service of militia, is to be considered as limiting the allowance to be made under the 10th section to the amount for which the United States would have been liable if the volunteers and militia mentioned in said section had been duly called into the service of the United States, and been regularly received and duly mustered therein. And the law does not embrace cases where the volunteers or militia were so received and mustered.—*Vol. 10, p. 255.*

2234. The act of March 3, 1839, (5 Stat., 356, sec. 8,) provides "that whenever militia or volunteers are called into the service of the United States, they shall have the organization and receive the pay of the army of the United States."—*Vol. 19, pp. 432, 434.* PAY, I, 1087; VI, 1267, 1268, 1286. TRAVEL PAY, II, 2184.

VOUCHER.

2235. Vouchers for commutation of quarters and fuel should first be submitted to the Quartermaster General for administrative examination.—*Vol. 29, p. 467.*

2236. Where one claimed to be the *bona fide* holder of a quartermaster's voucher which was not indorsed, and there was no evidence of any assignment, sale, or transfer, payment was withheld for application by the party whose legal right to receipt is undoubted.—*Vol. 29, pp. 386, 387.*

2237. A voucher for services was duly certified by the proper officer and receipted by the payee, although the approval of the chief quartermaster of the post was forged. Held that the forgery should not bar

payment to the person who rendered the services or even to a holder of the bill receipted by the original party, unless a guilty knowledge of the forgery be traced to such party claimant.—*Vol. 29, p. 621.*

2238. Original vouchers must be produced to the accounting officers. Duplicates cannot be admitted, unless accompanied by satisfactory evidence of the loss or destruction of the originals.—*Vol. 9, pp. 277, 287, 367, 418.*

2239. Disbursing officers will be required to furnish the original vouchers or sub-vouchers in their accounts, unless they have been lost or destroyed, or their retention is indispensable to the performance of duty by an officer acting under orders.—*Vol. 28, p. 371.*

2240. If an original certificate would be paid on presentation to any officer of the quartermaster's department, other than the Quartermaster General, such certificate should be surrendered before payment is made on the duplicate.—*Vol. 12, p. 35. ACCOUNTS, 12; CLAIMS, II, 456; EVIDENCE, 819; DISBURSING OFFICER, 747.*

2241. Vouchers must be made out in full with the true date, place and exact amount of money before they are signed — *Vol. 21, pp. 477-80.*

2242. Where it appeared that a disbursing officer had made payments in good faith for adequate services rendered, and the vouchers, though faulty and informal, were, no doubt, genuine, and the officer in the mean time died before he had time to put his accounts in proper form; Held that the claim to reimbursement was meritorious and just, and having the approval of the proper department, it would be safe for the United States to make payments upon the informal vouchers. Lieutenant Tree's case, United States army.—*Vol. 25, pp. 295, 296.*

2243. In case of lost vouchers, parol testimony, or the affidavit of the disbursing officer, cannot be accepted by the accounting officers as equivalent to the vouchers necessary to the correct and prompt settlement of his account as required by the second section of the act of January 31, 1823, (3 Stat., 723).—*Vol. 19, p. 292.*

2244. The mere statement of an officer is not a sufficient voucher upon which to establish a claim.—*Vol. 12, p. 433.*

2245. Vouchers referring to a verbal contract only, without a specification of particulars, are inadmissible.—*Vol. 3, p. 235. PENSIONS, VII, 1649, 1650; PURCHASES, 1760.*

WARRANT OFFICERS.

2246. The appointment of forward warrant officers is, by law, confined to the President.

Neither the commander of a vessel nor the commander of a squadron can give a valid appointment in such cases.—*Vol. 12, p. 436.*

2247. When a seaman performed duty as boatswain, under an acting appointment as such by the commanding officer of the squadron, subsequently approved by the Secretary of the Navy, he is enti-

tled to be paid as boatswain. The acts of March 3, 1839, (5 Stat. 362;) August 26, 1842, (5 Stat., 535,) and September 28, 1850, (9 Stat., 513,) do not apply to such a case. And the proviso to the act of August 4, 1842, (5 Stat., 500,) was, so far as relates to warrant officers, repealed by the act of March 3, 1847, (9 Stat., 169.)—*Vol.* 15, *p.* 444.

2248. A master's mate is not included in the complement of any vessel agreeably to the present table; and such an appointment cannot be made by any commanding officer without special sanction of the Secretary of the Navy.—*Vol.* 12, *p.* 157.

2249. The percentage for length of sea service granted by the 5th section of the act of August 5, 1854, (10 Stat., 587,) to forward warrant officers of the navy, is to be calculated upon the sea, or other pay, fixed by that act exclusive of the increased allowance for serving in vessels of certain complements.—*Vol.* 17, *p.* 328.

WAR RISK.

2250. The war risk does not include the injuries received by a vessel striking upon rebel obstructions placed in the channel of a river when the location of such obstructions was known to the pilot, and the vessel pursuing the ordinary course of her voyage.—*Vol.* 29, *pp.* 403-405. PROPERTY LOST, 1749, 1750; CHARTER PARTY, 365, 366.

WILLS.

2251. A soldier cannot, by last will and testament, transfer his right either to extra pay or land; but arrearages of pay may be so transferred.—*Vol.* 13, *p.* 150.

2252. The identity of a claimant under a soldier's will must be established by other evidence than his own affidavit. The possession by the claimant of a copy of the will, purporting to be certified as such by one of the witnesses, does not constitute evidence that can be legally regarded.—*Vol.* 15, *p.* 3.

2253. Payment to legatees of deceased soldiers or sailors will not be made under nuncupative will. And the wills of all seamen and marines, in actual service or not, must be in writing and attested by an officer.—*Vol.* 25, *p.* 543; *vol.* 14, *p.* 363.

2254. In the case of Captain M. S. Miller's having paid the legatee of I. White under a nuncupative will, held that he had no right to pay balance due deceased to any person. The rule of the Treasury Department is, that payments will not be made, under nuncupative wills, to legatees of deceased soldiers.—*Vol.* 18, *pp.* 48, 49; *vol.* 14, *p.* 363.

2255. The captain's clerk is not to be regarded as "an officer," within the meaning of the regulation requiring that the will of a seaman shall be attested by an officer.—*Vol.* 6, *p.* 217.

2256. Wills of seamen and marines, whether in actual service or not, are required to be in writing, and attested by an officer.—*Vol. 11, p. 473*

2257. Except under very peculiar circumstances the wills of sailors and soldiers are always required to be in writing and attested by an officer.—*Vol. 27, p. 177.*

2258. A legatee, under a will, of pay, &c., due a decedent, is not entitled to the extra allowances granted by Congress subsequently to the execution of the will.—*Vol. 17, p. 49.*

2259. Nuncupative wills, which had their origin in the necessity that existed during the dark ages, when very few persons could either read or write, have been more and more discontinued in modern and more enlightened times; and now, even in Great Britain, they are wholly abolished, except in cases of marines at sea and soldiers in actual service.—*Vol. 27, p. 178.*

2260. There is a regulation of the Navy Department which requires that, in the very cases in which alone the laws of Great Britain and New York admit nuncupative wills, they shall be in writing and attested by an officer, if the testator be not himself an officer.

But as that regulation speaks only of seamen and marines in actual service, it does not expressly include the case of seamen dying at a hospital. The Secretary of the Navy enlarged the rule, (on the 26th of April, 1847,) requiring the wills of seamen and marines to be in writing and attested by an officer, so as to make it applicable to all seamen and marines in the navy, whether in actual service or not.—*Ibid.*

2261. An instrument purporting to be a will, and reciting, "to receive and dispose of all my property that I am possessed of at this present date," &c., is wholly informal, and does not operate as a devise of the property of which the testator might die possessed. But where the circumstances and evidence, however, show that the person named in the instrument was regarded as a general legatee, payment may be made to him as such.—*Vol. 19, pp. 173, 174.*

2262. The will of a pensioner, in which a guardian is named, may not be accepted by a pension agent, instead of the required certificate from the proper court, as to the appointment of the guardian, when the latter can be readily obtained.—*Vol. 20, p. 475.*

WITNESS.

SEE *Courts-martial.*

2263. Under the acts of March 3, 1839, (5 Stat., 349,) August 23, 1842, (5 Stat., 510,) August 26, 1842, (5 Stat., 525,) September 30, 1850, (9 Stat., 542,) forbidding extra compensation to all persons in the service of the United States, payments beyond their actual necessary expenses have been considered by this office as prohibited in respect of witnesses before a court-martial. But the rule laid

down by the First Comptroller allowed such persons the same fees, mileage, &c., as citizens. The act of February 26, 1853, (10 Stat., 167,) restricts the allowance to clerks and officers as witnesses before district and circuit courts of the United States, to actual necessary expenses. And in all cases within the jurisdiction of this office the rule now is to allow to clerks and other officers summoned by the government as witnesses before any court or commission convened under authority of the United States, or any department thereof, only their actual necessary expenses, in addition to their regular official compensation, when not otherwise directed by law or regulation.—*Vol. 27, p. 128.*

2264. Among the "necessary expenses" the legal fees of the magistrate who may administer the required oath and execute the jurat are included.—*Vol. 28, p. 433.*

2265. When the person signing a receipt does so by making his mark, the witness of it should be another person than the magistrate certifying.—*Vol. 25, p. 72.*

2266. And where a disbursing officer witnessed the receipt of a person thus signing, it was held to be a non-compliance with the rule requiring a disinterested witness to the signature. So also in the case of a quartermaster who witnessed the receipt of money paid over by himself.—*Vol. 28, p. 243.*

2267. When a signature to a receipt for money is signed by mark, a witness to the signature is in all cases required.—*Vol. 11, p. 183.*

2268. The mark of a witness to the signature of another, who merely affixes his mark to a receipt, is not deemed a sufficient compliance with the regulation.—*Vol. 10, p. 350.*

2269. The signature of a person making his mark upon any paper connected with an account or claim must be witnessed.—*Vol. 24, p. 499. EVIDENCE, 807.*

2270. There must be the name of one other witness than the magistrate, before whom a power of attorney may be acknowledged.—*Vol. 20, p. 349.*

2271. A witness is entitled to transportation and per diem from the place where notice of the summons was received, although sent to another place. Otherwise a dishonest judge advocate would have it in his power to decrease or increase indefinitely the allowances of the witnesses by sending the summons to a place nearer to, or more remote from, the court than he knew the witness to be at the time; and the witness would be made liable for the blunders of the judge advocate.—*Vol. 29, p. 551.*

2272. But when the witness was on a temporary visit to the place where notice of the summons was received, and would soon have incurred the expenses of the return trip, had the summons never been sent, payment only of the per diem for the time lost, and the extra expense necessarily incurred by reason of attendance upon the court, will be allowed.—*Ibid.*

2273. Under General Orders No. 108, April 28, 1863, when volun-

teer troops are mustered out the entire regiment or organization is considered as mustered out at the same time and place, and an officer of such regiment, retained as a witness before a military court, must be regarded as a civilian witness and paid as such.—*Vol. 31, p. 147.*

2274. Contract surgeons, not being officers of the army, when summoned as witnesses are only entitled to expenses.—*Vol. 30, p. 573.*

WOMEN.

2275. By the law of March 16, 1802, (2 Stat., 134, sec. 5,) women allowed to any particular corps are not to exceed the proportion of four to a company. No greater number can be allowed at the stations of Washington and Norfolk.—*Vol. 19, p. 538.*

WOUND.

2276. When the injury for which a soldier has been discharged was the direct result of his participation in a fight against the enemy, the hurt disabling him as a soldier is a wound within the meaning of the law of March 3, 1863, (12 Stat., 758.) But whenever the wound differs from the common acceptation of the word, and which is technically defined to be "a solution of continuity," such as a cut, a stab, &c., its nature, effect, and the circumstances in which received, should be fully stated.—*Vol. 26, pp. 196, 197.* BOUNTY, 111.

2277. An injury or wound of sufficient gravity to cause discharge, received in battle, as an incident or direct result of hostilities actually going on at the time, is held to be a wound within the meaning of the law.—*Vol. 28, p. 523.*

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